

## **Transfer of Convicted Persons (Amendment) Bill, 2014**

### ARRANGEMENT OF SECTIONS

#### *Section*

1. Section 4 of Act 743 amended
2. Section 11 (3) of Act 743 amended
3. Section 12A of Act 743 inserted

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A  
**BILL**

ENTITLED

**TRANSFER OF CONVICTED PERSONS  
(AMENDMENT) ACT, 2014**

**AN ACT** to amend the Transfer of Convicted Persons Act, 2007 (Act 743) to allow for the compulsory transfer of convicted persons and for related matters.

DATE OF ASSENT

Passed by Parliament and assented to by the President:

**Section 4 of Act 743 amended**

1. The Transfer of Convicted Persons Act, 2007 (Act 743) referred to in this Act as the "principal enactment" is amended in section 4 by the substitution for paragraph (g), of

"(g) that subject to section 12A (1) and (2), the convict consents to the transfer or where, in the view of the age, physical or mental status of the convict, the convict is unable to give consent, the consent is given by a person designated either by the Attorney-General or the appropriate authority of the sentencing country as being competent to give consent on behalf of the convict."

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**Section 11 (3) of Act 743 amended**

2. The principal enactment is amended in section 11 (3) by the substitution for paragraph (c), of

“(c) subject to subsection 12A(3) and (4), the convict consents to the transfer;”.

**Section 12A of Act 743 inserted**

3. The principal enactment is amended by the insertion after section 12, of

**“Consent of convict waived**

**12A.** (1) Where a request is made to the Republic under section 2, the convict may be transferred into Ghana without the consent of that convict, if

- (a) the convict tried to avoid incarceration by fleeing from the sentencing country to Ghana;
- (b) the convict escaped from lawful custody in the sentencing country and came to Ghana after conviction but prior to the convict serving the full term of the sentence; or
- (c) the sentence passed on the convict or an administrative decision consequential to a sentence passed on the convict, includes an expulsion or deportation order or any other measure as the result of which that convict is not allowed to remain in the sentencing country once the convict is released from prison.

(2) The Republic shall not agree to the transfer of a convict in the circumstances specified under subsection (1)(c), unless

- (a) the sentence passed on that convict is equal to or more than the sentence that makes that convict eligible for transfer, as specified in the Agreement for the Transfer of Convicted Persons between that foreign country and the Republic; and
- (b) the Attorney-General has considered the representations made by the convict with respect to the transfer.

(3) Where the Attorney-General makes an application to a competent authority in a foreign country under section 10(1), the convict may be transferred out of Ghana without the consent of that convict, if

- (a) the convict tried to avoid incarceration by fleeing from Ghana to the foreign country prior to the conviction of that convict in Ghana;

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- (b) the convict escaped from lawful custody in Ghana and travelled to the foreign country after conviction but prior to the convict serving the full term of the sentence; or
  - (c) the sentence passed on the convict or an administrative decision consequential to a sentence passed on the convict, includes an expulsion or deportation order or any other measure as the result of which that convict is not allowed to remain in Ghana once the convict is released from prison.
- (4) The foreign country may agree to the transfer of a convict in the circumstances specified under subsection (3)(c), after considering
- (a) the sentence passed on that convict to determine whether or not the sentence is equal to or more than the sentence that makes the convict eligible for transfer, as specified in the Agreement for the Transfer of Convicted Persons between that foreign country and the Republic; and
  - (b) the representations made by the convict with respect to the transfer."

Date of *Gazette* notification: 30th October, 2014.

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### MEMORANDUM

The Transfer of Convicted Persons Act, 2007 (Act 743) was enacted to facilitate the transfer of convicted persons between Ghana and other countries. It is a condition precedent under Act 743 to obtain the consent of a convicted person before the transfer of that convicted person to this country or out of this country. Sections 4(g) and 11 (3)(c) of Act 743 which specifies this requirement are based on articles 3(1)(d) and 7 of the Convention on the Transfer of Sentenced Persons (Strasbourg, 21.11.1983).

Subsequently an Additional Protocol to the Convention on the Transfer of Sentenced Persons (Strasbourg, 18.11.1997) which permits the transfer of a convicted person without the consent of that convicted person in specified circumstances is available for ratification.

Though Ghana is not a signatory to the European Union Convention on the Transfer of Sentenced Persons, the substance of that Convention was adopted by the Commonwealth Secretariat as a model law for countries that belonged to the Commonwealth. As a member of the Commonwealth, Ghana enacted its law on the transfer of convicted persons in accordance with the model proposed by the Commonwealth Secretariat. The European Union Convention on the Transfer of Sentenced Persons has subsequently been amended by an Additional Protocol. Though Ghana is not a member of the European Union, the reasons underlying the signing of that Protocol holds good for Ghana.

Under the Additional Protocol, the consent of a convicted person to the transfer of that convicted person is waived absolutely by that convicted person when an Administering State is requested by the Sentencing State to take over the execution of the sentence of the convicted person, where

- (a) the convicted person tried to avoid incarceration by fleeing from the Sentencing State to the Administering State prior to the conviction of that person, or
- (b) the convicted person escapes from lawful custody of the Sentencing State after conviction but prior to the convicted person serving the full term of the sentence.

The Protocol further states that where the sentence passed on a convicted person, or an administrative decision consequential to that sentence includes an expulsion order or a deportation order or any other

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measure as a result of which that convicted person is not allowed to remain in the territory of the Sentencing State once the convicted person is released from prison, then the Administering State may accept a transfer of the convicted person without the consent of that person but only after considering the opinion of that person concerning the transfer. This Bill seeks to incorporate the substance of these articles cited in the preceding paragraphs into Act 743.

*Clause 1* amends section 4 of Act 743 by making paragraph (g) subject to the newly inserted section 12A(1) and (2).

*Clause 2* substitute's paragraph (c) of section 11 (3) of Act 743. The operation of the new paragraph (c) is made subject to section 12A (3) and (4).

*Clause 3* inserts a new section after section 12. The new section 12A specifies the circumstances under which a convicted person may be transferred into or out of the country without the consent of that convicted person, and the procedure to be followed in that instance.

A convicted person may be transferred into Ghana without the consent of that convict where a request is made to the Republic under section 2 of Act 743 and the convict tried to avoid incarceration by fleeing from the sentencing country into Ghana prior to the conviction of that convict; or the convict escaped from lawful custody in the sentencing country and came to Ghana after conviction but prior to the convict serving the full term of the sentence; or the sentence passed on the convict or an administrative decision consequential to a sentence passed on the convict, includes an expulsion or deportation order or any other measure as the result of which that convict is not allowed to remain in the sentencing country once the convict is released from prison.

The Republic is not to agree to the transfer of a convict in the circumstances specified under paragraph (c), unless the sentence passed on that convicted person is equal to or more than the sentence agreed on by the Republic and the sentencing state in the Agreement for the Transfer of Convicted Persons between that foreign country and the Republic, as

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a sentence that makes that convicted person eligible for transfer, and the Attorney-General has considered the representations made by the convict with respect to the transfer.

Also where the Attorney-General makes an application to a competent authority in a foreign country under section 10(1) of Act 743, the convict may be transferred out of Ghana without the consent of that convict, if the convict tried to avoid incarceration by fleeing from Ghana to the foreign country prior to the conviction of that convict in Ghana; or the convict escaped from lawful custody in Ghana and travelled to the foreign country after conviction but prior to the convict serving the full term of the sentence; or the sentence passed on the convict or an administrative decision consequential to a sentence passed on the convict, includes an expulsion or deportation order or any other measure as the result of which that convict is not allowed to remain in Ghana once the convict is released from prison.

The foreign country to which the convicted person is being sent may also have to agree to the transfer of the convicted person in the circumstances specified under paragraph (c), after considering the sentence passed on the convicted person to determine whether or not the sentence is equal to or more than the sentence agreed on as the sentence that makes the convicted person eligible for transfer by the foreign country and the Republic in the Agreement for the Transfer of Convicted Persons between that foreign country and the Republic, and the representations made by the convict with respect to the transfer.

MARIETTA BREW APPIAH-OPONG  
*Attorney-General and Minister responsible for Justice*

*Date:* 30th October, 2014.