



**Tuvalu**

# **DEPORTATION ACT**

**2008 Revised Edition**

**CAP. 24.10**





Tuvalu

## DEPORTATION ACT

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Tuvalu

## DEPORTATION ACT

### AN ACT TO REGULATE THE DEPORTATION OF UNDESIRABLE ALIENS<sup>1</sup>

Commencement [14th December 1968]

#### 1 Short title

This Act may be cited as the Deportation Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires —

“**alien**” means a person who is not a citizen of Tuvalu;

“**convicted person**” means a person who the Minister is satisfied has been convicted by any court of an offence punishable with imprisonment otherwise than only in default of payment of a fine;

“**court**” includes an Island Court;

“**deportation order**” means an order requiring the person in respect of whom it is made to leave and remain out of Tuvalu;

“**destitute person**” means a person who is, or is likely to be, a charge upon public funds by reason of mental or bodily health or insufficiency of means to support himself and his dependants (if any);

“**person charged**” means a person in respect of whom it is alleged that there are grounds for making a deportation order under this Act and also means a person in respect of whom such an order has been made;

“**ship**” includes aircraft, “**port**” includes an airport and the expression “**master of a ship**” includes the commander of an aircraft, or if there is no commander, the pilot thereof;

“**undesirable person**” means a person who is or has been conducting himself so as to be dangerous to peace, good order, good government, or public morals.

### **3 Power to make deportation orders**

- (1) Subject to the provisions of this Act the Minister may make a deportation order in respect of an alien who is —
  - (a) a convicted person in respect of whom any court has recommended that a deportation order should be made in his case, either in addition to or in lieu of sentence; or
  - (b) an undesirable person; or
  - (c) a destitute person.
- (2) Where any case in which a court has made a recommendation for deportation is brought by way of appeal before any higher court, and that court certifies to the Minister that it does not concur in the recommendation, such recommendation shall be of no effect but without prejudice to the power of the Minister to make an order of deportation under paragraph (b) or (c) of subsection (1)

### **4 Conditions to be fulfilled before order is made**

Except where a court has recommended that a deportation order should be made, no deportation order shall be made under this Act except where the Senior Magistrate has, in accordance with the provisions of sections 5 and 6, made a report on the case and the Minister is satisfied, having regard to the findings of fact and any conclusions of law as stated in such report, that such order may properly be made.

### **5 Service of notice and arrest**

- (1) A notice in Form 1 in the Schedule shall be served upon the person charged specifying, with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him the grounds upon which it is alleged that a deportation order may be made against him under this Act and requiring him to show cause before the Senior Magistrate, at a time and place to be stated in such notice, why such a deportation order should not be made in respect of him.
- (2) In any case where it is intended to take proceedings against any person under this Act on the ground that he is an undesirable person, and it is represented on oath or affidavit to the Senior Magistrate that such person is an undesirable person, the Senior Magistrate may issue a warrant for his arrest, and if the notice referred to in subsection (1) has not already been served upon him it shall be served upon him not later than 24 hours after his apprehension.

## **6 Powers of Senior Magistrate**

- (1) At the time appointed in the notice served under the foregoing section, or at any adjournment of the hearing, the Senior Magistrate shall take such evidence upon oath as is tendered in support of the charges, and the witnesses may be cross-examined by the person charged or his counsel and the person charged may on his own behalf call such witnesses and tender such other evidence as may be relevant upon the questions at issue.
- (2) The Senior Magistrate, after considering the evidence adduced before him and making any further investigations which he may consider to be desirable, shall make a report to the Minister setting out his findings of fact and his conclusion on any questions of law involved, and, if he thinks fit, making a recommendation as to whether or not a deportation order should be made under this Act.
- (3) Notwithstanding anything to the contrary in any other law, if the Attorney-General shall certify to the Senior Magistrate holding an inquiry under the provisions of this Act that it is, in his opinion, desirable in the public interest that such inquiry, or such part of such inquiry as the Attorney-General may specify, should be held in camera, the Senior Magistrate may direct that the public generally, or any particular person or class of persons, shall not have access to, or be or remain in, any room, building or place in which such inquiry is held during such inquiry or part thereof as the case may be.
- (4) A recommendation of the Senior Magistrate made under subsection (2) shall not be subject to appeal.

## **7 Detention in custody pending decision**

Where the Senior Magistrate or a court recommends the deportation order on the grounds that a person is an undesirable person or a convicted person, the person charged may, if the Senior Magistrate or court, as the case may be, shall so order, be detained in such manner as the Senior Magistrate or court may direct, pending the decision of the Minister, for a period not exceeding 28 days and shall be deemed to be in legal custody whilst so detained.

## **8 Form of order**

Every deportation order shall be in Form 2 in the Schedule.

## **9 Execution of order**

- (1) As soon as practicable after a deportation order is made a copy thereof shall be served upon the person charged together with a summary of the findings of fact and conclusions of law as stated in the report made under section 6(2).

- (2) Subject to subsection (3) a person in respect of whom a deportation order is in force may be detained in such manner as may be directed by the Minister, and may be placed on a ship about to leave Tuvalu and shall be deemed to be in legal custody while so detained and until the ship finally leaves Tuvalu.
- (3) No person shall be detained under subsection (2) for a period exceeding 28 days and if at the expiration of such period he has not been deported as aforesaid, the deportation order shall cease to have effect.
- (4) The master of a ship about to call at any port outside Tuvalu shall, if so required by the Minister or by an immigration officer, receive a person against whom a deportation order has been made and his dependants (if any) on board the ship and afford him and them a passage to that port and proper accommodation and maintenance during the passage.
- (5) If any master of a ship fails to comply with the provisions of subsection (4) he shall be guilty of an offence and liable to a fine of \$400, and the owner of the ship and any agent of such owner in Tuvalu shall be guilty of a similar offence and liable to a similar penalty.

## **10 Expenses**

- (1) Where a deportation order is made, the Minister may, if he thinks fit, apply any money or property of the person to whom such order applies in payment of the whole or any part of the expenses of or incidental to the passage from Tuvalu and the maintenance until the departure of that person and his dependants (if any).
- (2) Except so far as they are defrayed under the preceding subsection any such expenses shall be payable out of public funds.

## **11 Persons undergoing sentence**

If a person in respect of whom a deportation order is made under this Act has been sentenced to any term of imprisonment, such sentence shall be served before the order is carried into effect unless the Minister otherwise directs.

## **12 Revocation and variation of order**

- (1) The Minister may —
  - (a) at any time revoke a deportation order; or
  - (b) vary a deportation order so as to permit the person mentioned therein to enter or remain for a specified time in Tuvalu and may attach to such permission conditions as to security or otherwise.

- (2) Any order made under paragraph (b) of subsection (1) may be expressed to have effect for the duration of the order thereby varied or for any lesser period.
- (3) As soon as practicable after an order has been made under this section a copy thereof shall be served upon or sent to the person in respect of whom it is made.

### **13 Penalties for breach of order**

- (1) If a person in respect of whom a deportation order is in force —
  - (a) fails to leave Tuvalu or returns or attempts to return to Tuvalu in contravention of the provisions of the order; or
  - (b) having entered or remained in Tuvalu in pursuance of permission given as hereinbefore provided, wilfully fails to observe any conditions attached to such permission,he shall be liable to a fine of \$2000 and to imprisonment for 3 years and to be again deported under the original order, and the provisions of sections 9, 10 and 11 shall apply accordingly.

### **14 Penalty for harbouring**

- Any person who, without lawful excuse, knowingly harbours or conceals any person who —
- (a) is within Tuvalu or an area thereof in contravention of the terms of a deportation order; or
  - (b) having entered Tuvalu or any area thereof in pursuance of permission given as hereinbefore provided, has wilfully failed to observe any conditions attached to such permission,
- shall be liable to a fine of \$200.

### **15 Institution of proceedings**

No proceedings shall be instituted under this Act except by the Attorney-General or with his previous sanction in writing.

### **16 Regulations**

The Minister may make regulations for the better carrying out of the provisions of this Act,

**17 Saving**

The provisions of this Act shall be additional to and not in derogation of the provisions of the Immigration Act<sup>2</sup> and the Passports Act.<sup>3</sup>

**SCHEDULE**

**FORM 1**

[S. 5(1)]

**NOTICE TO SHOW CAUSE BEFORE THE SENIOR MAGISTRATE**

DEPORTATION ACT

*(CAP. 24.10)*

To .....

Whereas it is alleged against you that you are not a citizen of Tuvalu and that a deportation order ought to be made against you by reason of the following facts, that is to say that you

.....  
.....

and on the following grounds that you are \*(an undesirable person or a destitute person)

You are hereby required to show cause before His Worship the Senior Magistrate at the Senior Magistrate's Court at .....at .....

..... o'clock in the .....noon, or at such later time as he may appoint, why such a deportation order should not be made against you.

Dated this .....day of .....20.....

*Minister.*

\* Delete words in brackets which are inapplicable.

**FORM 2**

[S.8]

**DEPORTATION ORDER**

DEPORTATION ACT

*(Cap. 24.10)*

Whereas it appears to the Minister that .....should be required to leave and remain out of Tuvalu under the provisions of the above —

named Act for \*(the period of .....years or for an unlimited period) from the date hereof upon the grounds hereinafter appearing.

The Minister does hereby by virtue of the said Act order the abovenamed person to leave and remain out of Tuvalu for the said period from the said date, and does further order that the period of .....days from the date of the discharge of the said person from prison, or from the date of service upon him of this order, whichever be the later, be fixed as the time within which the said person shall depart from Tuvalu —

Statement of the grounds upon which this order is made —

That the said person, not being a citizen of Tuvalu, is —

\*(a convicted person in respect of whom a court has recommended that a deportation order should be made in this case, either in addition to or in lieu of sentence

*or*

an undesirable person

*or*

a destitute person).

*Minister.*

\* Delete words in brackets which are inapplicable.

## ENDNOTES

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<sup>1</sup> 1990 Revised Edition, Cap. 78 – Acts 9 of 1968, 6 of 1979

<sup>2</sup> Cap. 24.15

<sup>3</sup> Cap. 24.20