

EXPLANATORY MEMORANDUM ON AN AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF ALBANIA ON THE TRANSFER OF SENTENCED PERSONS

Title of Agreement

Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania on the transfer of sentenced persons.

Command Paper Number 8559

Subject Matter

This Agreement provides for the transfer of sentenced persons between the United Kingdom and Albania. It was signed in London on 15 January 2013.

The Agreement provides for the transfer to the United Kingdom, from Albania, of British nationals, and for the transfer to Albania, from the United Kingdom, of Albanian nationals; where those persons have been sentenced to imprisonment by a court of the transferring state on account of a criminal offence. It applies where the sentenced person either consents to the transfer or is subject to an order for expulsion, deportation, or removal; where the offence, on account of which the sentence has been imposed, would also constitute a criminal offence in the other jurisdiction; where the judgment is final; and where the person concerned has at least six months of the sentence left to serve. A transfer requires the consent of the both States. The consent of the sentenced person is not required where that person is subject to an order for expulsion, deportation or removal.

Ministerial Responsibility

The Secretary of State for Foreign and Commonwealth Affairs is responsible for consular relations between the United Kingdom and Albania. The transfer of prisoners under this Agreement to or from England and Wales is the responsibility of the Lord Chancellor and Secretary of State for Justice; the transfer of prisoners to or from Scotland is the responsibility of the Scottish Minister for Justice; and the transfer of sentenced persons to or from Northern Ireland is the responsibility of the Justice Minister for Northern Ireland.

Policy Considerations

(i) General

Foreign national prisoners make up approximately 13% of the prison population. Many of those prisoners have no right to settle in this country and others will have forfeited that right by their criminal behaviour. The Government is committed to ensuring that, where appropriate, they should be returned to serve their sentences in the country where they will live on release. This will free up prison places and enable prisoners who are transferred to be more effectively integrated into their home communities. To this end it is Government policy to negotiate and conclude prisoner transfer

agreements with a wide number of other countries or to encourage other countries to participate in the European Convention on the Transfer of Sentenced Persons (1983) or the Commonwealth Scheme for the transfer of convicted offenders within the Commonwealth (1990, as amended).

Most of the prisoner transfer agreements to which the UK is a party require the consent of the sentenced person concerned, as well as that of both States involved. It is increasingly the case that many foreign national prisoners have no links with the country in which they are detained and will be removed at the end of their sentence by the authorities. As a consequence international prisoner transfer agreements are moving away from the idea that prisoners should have to consent to transfer and therefore exercise an effective veto over transfer. The Council of Europe recognised this dilemma when it implemented the Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons in 1997. The Additional Protocol provides for the transfer of prisoners without their consent where they would otherwise be deported at the end of the sentence. The Convention and its Protocol is open to signature by both Council of Europe Members and non-Member States. The United Kingdom ratified the Additional Protocol in 2009. The European Union has also recognised the need for transfer without the consent of the prisoner. A new Framework Decision on the transfer of prisoners between Member States of the EU was adopted at the Justice and Home Affairs Council on 28 November 2008. It entered into force on 5 December 2011.

In order to pave the way for ratification by the United Kingdom of the Additional Protocol and implementation of the Framework Decision, the Police and Justice Act 2006 amended the Repatriation of Prisoners Act 1984 by removing the need for prisoners to consent to transfer in each case; consent to transfer is now only necessary where required by the relevant international arrangement.

The Government has made it clear that wherever possible it will seek to negotiate bilateral prisoner transfer arrangements on the basis of a "no prisoner consent" agreement. The Agreement with Albania is in line with this position. It provides for the transfer of a sentenced person where that person is subject to expulsion or deportation at the end of the sentence, and where both the British and Albania Governments have consented to the transfer. In deciding whether or not a prisoner should be transferred without his or her consent, account will be taken of the prisoner's views and of their links with the United Kingdom and with Albania. Account will also be taken of prison conditions in the receiving State and any concerns as to the prisoner's safety in the event of a transfer. However, in the case of a prisoner returning to his own country where he has recently been resident, the Government believes that local prison conditions should be viewed in the context of the general living conditions of the country concerned. A prisoner has no formal right to appeal against a decision to transfer him to a prison in his country of nationality but will be able to seek a judicial review of the decision in the normal way.

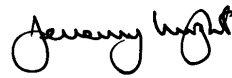
(ii) Financial

The cost of transferring a prisoner from the transferring state (the state from which the sentenced person may be, or has been transferred) to the receiving state (the state to which the sentenced is transferred) is a matter for transferring state. The cost of the

continued detention of a sentenced person following transfer is a matter for the receiving state.

Implementation

This Agreement enters into force following completion by each State of their respective internal constitutional and legal procedures necessary to give effect to the Agreement. No new legislation is required to enable the United Kingdom to implement the Agreement.

A handwritten signature in black ink, appearing to read 'Jeremy Wright', with a stylized, cursive script.

JEREMY WRIGHT

Parliamentary Under Secretary of State
Ministry of Justice