



Iraq No. 1 (2016)

Agreement

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the Republic of Iraq on the
Transfer of Sentenced Persons

London, 8 October 2015

[The Agreement is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
January 2016*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE REPUBLIC OF IRAQ ON THE TRANSFER OF
SENTENCED PERSONS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Iraq (hereafter referred to as “the United Kingdom” and “Iraq” and together as the “Parties”);

In observation of the international developments of the arrangements of transferring sentenced persons, and the good international relations between the two countries;

In order to encourage the social rehabilitation of sentenced persons by giving them opportunity to complete their sentences in their own countries;

With the reconfirmation that the sentenced person will be treated with respect in accordance with the human rights they are entitled to;

Having agreed the following:

ARTICLE 1

Definitions

For the purpose of this Agreement:

1. “the transferring State” means the State which has issued a final judgment on a sentenced person and which transfers, or has transferred the sentenced person.
2. “the receiving State” means the State to which the sentenced person is transferred, or has been transferred to and which will implement the final judgement on the sentenced person.
3. “sentenced person” means a person/convict who is required to be detained in a prison or at any other institution in the transferring State in accordance to a judgment issued from the transferring State due to a committed crime.
4. “judgment” means a final decision or order of a competent court imposing any sentence or procedure that contains deprivation of freedom based on a court judgment from the “transferring State”.

5. “national” means:
 - a in relation to the United Kingdom, a British citizen; and
 - b in relation to Iraq, a person who holds Iraqi nationality.

ARTICLE 2

General Principles

1. The two Parties shall grant each other the highest degree of cooperation with regards to the transfer of sentenced persons in accordance with the terms of this Agreement.
2. As far as the two Parties are concerned, this Agreement shall prevail over any other multilateral Agreements which specifically govern the transfer of sentenced persons between the Parties.
3. Conditional on the consent of both Parties and the sentenced person, the sentenced person may be transferred from the territories of the transferring State to the territories of the receiving State in accordance with the conditions of this Agreement for the purpose of continuing to serve the sentence imposed in the transferring State.
4. Transfer of the sentenced persons can be upon a request from the transferring State or from the receiving State.
5. Both Parties may sign a Memorandum of Understanding governing execution of this Agreement.

ARTICLE 3

Conditions for Transfer

According to this Agreement, sentenced persons can be transferred in accordance with the following conditions only:

1. The sentenced person shall be a national of the receiving State for the purposes of this Agreement.
2. The sentenced person must agree to the transfer.
3. The court judgment is final and no deferred legal procedures should be outstanding in the transferring State related to the crime or other crimes committed by the sentenced person.

4. The acts which led to the imposition of the sentence are considered as crimes according to the laws of the receiving State.

5. The sentenced person should have at least six months of his sentence left to serve at the time the receiving State receives the transfer request. In exceptional cases, both Parties have the right to agree on the transfer even though the sentenced person has less than six months of his sentence left to serve; and

6. Both the transferring State and the receiving State agree to the transfer.

ARTICLE 4

Refusal of a Transfer

1. Nothing in this Agreement shall confer on any sentenced person any right to transfer.

2. Either Party may refuse to make or receive a transfer on any grounds.

ARTICLE 5

Procedures for Transfer

1. Transfer requests shall be submitted and replied to in writing and via diplomatic channels.

2. The State to which the request is directed shall notify the State requesting transfer of its decision as to whether they accept or decline the request.

3. If the receiving State requests the transfer of a sentenced person, it shall submit the following information, if available, to the transferring State:

- a) name, date and place of birth of the sentenced person;
- b) the location where the sentence person is held;
- c) the sentenced person's permanent address in the receiving State, if any.

4. If the transferring State request the transfer of a sentenced person, or, after receipt of the transfer request in accordance with paragraph 3 of this article, the transferring State is prepared, in principle, to consider the transfer request of a sentenced person, then it shall notify the receiving State in writing and submit the following information:

- a) name, date and place of birth of the sentenced person;
- b) the location where the sentenced person is held;
- c) the sentenced person's permanent address in the receiving State, if any.
- d) a statement of the facts on the basis of which the charge and sentence was decided;
- e) the nature, duration and starting date of serving the sentence, and the completion date of the sentence, if any, and the length of the actual period of the sentence that the sentenced person has already served, together with any reasons for remission of sentence that the sentenced person is entitled to as a result of carrying out a certain job, or due to good behaviour and reserved detention or any other reasons;
- f) a copy of the court judgment together with the information on the basis of which the judgment was made; and
- g) any additional information, if any, including medical or social reports related to the sentenced person that could be important for the transfer of the sentenced person and the continuation of serving his sentence.

5. If the receiving State, after having considered the information submitted by the transferring State, is willing to proceed with the transferring process, it shall notify the transferring State in writing and submit the following information:

- a) a statement indicating that the sentenced person is a national of the receiving State;
- b) a copy of the relevant law of the receiving State which states that the actions on the basis of which the sentence was imposed in the transferring State would constitute a criminal offence according to the law applied in the receiving State, or it represents a criminal offence if committed on its territory;
- c) a statement indicating the effects the law and regulations in the receiving State may have on the sentenced person's imprisonment in the receiving State after being transferred; and
- d) a statement of any serious allegations or charges or uncompleted criminal investigations regarding the sentenced person.

6. If the transferring State wish to proceed with the transferring process, then it should provide the receiving State with its written approval of the transfer conditions.

7. Once both Parties have agreed the terms of the transfer, they shall start the arrangements for transferring the sentenced person. The handing over of the sentenced person by the transferring State to the receiving State shall take place at a time and place agreed by both Parties.

8. If either of the two Parties decide not to agree on the transfer, it shall notify the other Party of its decision in writing.

ARTICLE 6

The Effects of Transfer on the Transferring State

1. The transfer of a sentenced person to the custody of the receiving State shall result in the suspension of the enforcement of the sentence in the transferring State.

2. The transferring State shall not seek to enforce the sentence if the receiving State considers that the sentence is complete.

ARTICLE 7

Retention of Jurisdiction

1. The transferring State shall retain the exclusive jurisdiction to review the judgment and sentence.

2. A transferring State may grant a pardon, or a general or special amnesty in accordance with its laws.

3. A receiving State may not grant a pardon or a general or special amnesty unless it is approved by the transferring State in writing.

4. The receiving State shall take the necessary actions to implement any pardon, or general or special amnesty granted by the transferring State.

ARTICLE 8

Continued Enforcement of the Sentence

1. The receiving State shall execute the sentence as if it had been imposed in the receiving State.

2. Continued enforcement of the sentence after the transfer shall be governed by the laws and regulations of the receiving State including the terms of imprisonment and detention or other deprivation of freedom.

3. The receiving State shall modify or terminate the serving of the sentence as soon as it is notified of any decision or arrangements by the transferring State that may lead to the cancellation or mitigation of the sentence.

4. The receiving State shall provide the transferring State with the following information regarding the continuation of the sentence:

- a) when the sentence has been completed;
- b) if the sentenced person has escaped from custody before completing the sentence;
- c) if the sentenced person cannot complete the sentence; or
- d) a special report upon request by the transferring State.

ARTICLE 9

Cost of Transferring a Sentenced Person

The receiving State shall bear the costs of the transfer of the prisoner to the receiving State and of his continued detention there, except costs incurred exclusively in the territory of the transferring State. The receiving State may however, seek to recover all or part of the cost of transfer from the sentence person or from some other source.

ARTICLE 10

Rights of the Sentenced Person

1. The sentenced person may express to the transferring State or to the receiving State his wish to be transferred in accordance with this Agreement.

2. The sentenced person shall:

- a) be informed of the contents of this Agreement by the transferring State; and
- b) be provided with written explanation of the terms of any transfer in the sentenced person's own language.

ARTICLE 11

Treatment of the Sentenced Person

Each Party shall treat all sentenced persons, who are transferred in accordance with this Agreement, according to the applicable international human rights obligations, particularly regarding the right to life and the prohibition against torture and cruel, inhumane or degrading treatment or punishment.

ARTICLE 12

The Transit of Sentenced Persons through a Third State

If either Party transfers a sentenced person to or from any third State, the other Party shall cooperate in facilitating the transit process of the sentenced person through its territory. The Party which intends to carry out the transferring process shall provide the other Party with advance notification of a transit. This shall not affect the rights of either of the Parties to refuse the transit in certain cases.

ARTICLE 13

Competent Authorities to the Agreement

1. The competent authorities responsible for implementation of this Agreement shall be: in relation to the United Kingdom, shall be:
 - (i) the National Offender Management Service in relation to England and Wales;
 - (ii) the Scottish Prison Service in relation to Scotland;
 - (iii) the Northern Ireland Prison Service in relation to Northern Ireland; and
 - (iv) the Department of Home Affairs in relation to the Isle of Man; and in relation to Iraq, the Ministry of Justice, Ministry of Interior and Ministry of Labour and Social Affairs in Iraq.
2. The Authorities mentioned in (1) above will establish communication points and means of communication to facilitate cooperation under this agreement.
3. Where a competent authority mentioned in paragraph 1 of this Article is changed, the changing Party shall notify the other Party of that change through the diplomatic channels.

ARTICLE 14

Territorial Application

This Agreement shall apply:

1. In relation to the United Kingdom, to the territory of Great Britain and Northern Ireland, the territory of the Isle of Man; and any other territory for whose international relations the United Kingdom is responsible and to which this Agreement is extended to by mutual agreement between the Parties by an exchange of diplomatic notes.
2. In relation to Iraq, to the territory of the Republic of Iraq and the regions within.

ARTICLE 15

Temporal Application

This Agreement applies to the transfer operations of sentenced persons who were sentenced before, on or after the entry into force of this Agreement.

ARTICLE 16

Settlement of Disputes

Any dispute between the two Parties arising from or related to this Agreement shall be resolved through diplomatic channels.

ARTICLE 17

Amendment and Modification

This Agreement may be amended or modified at any time through mutual consent of the Parties. Such amendment or modification shall enter into force when confirmed according to the Constitutional procedures followed by both States.

ARTICLE 18

Final Provisions

1. Each Party shall notify the other Party upon completion of its relevant internal constitutional and legal procedures required for this Agreement to enter into force.

2. This Agreement shall enter into force 30 days after receipt of the latter notification. Either of the Parties may terminate this Agreement at any time by notifying the other Party in writing. Any termination shall be effective (6) six months from the date of receiving the written notification.

3. Notwithstanding termination, the provisions of this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement

Done at London in duplicate, on this eighth day of October, in the year of 2015, in the English and Arabic languages, both texts shall be equally authoritative.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

ANDREW SELOUS

**For the Government of the
Republic of Iraq:**

HASSAN AL SHIMARI

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