

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

Title of Agreement

Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Ghana on the Transfer of Sentenced Persons.

Command Paper Number

9290

Subject Matter

This Agreement provides for the transfer of sentenced persons between the United Kingdom and Ghana. It was signed in Accra, Ghana on Thursday 12 November 2015.

The Agreement provides for the transfer to the United Kingdom, from Ghana, of British nationals, and for the transfer to Ghana, of Ghanaian 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 the sentenced person, while still serving a sentence, 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 jurisdiction of the receiving State; where the judgement is final; and where the person concerned has been sentenced to 12 months or more and has at least six months of the sentence left to serve at the time the request for transfer is received. A transfer requires the consent of both States, both of which may agree to a transfer even if the sentenced person has less than 6 months of the sentence left to serve. The consent of the sentenced person is not required where that person is subject to an order for expulsion, deportation or removal. Non-consensual transfers apply to those prisoners sentenced after 3rd June 2015.

The Agreement retains jurisdiction for the sentencing State only to be able to amend or cancel the sentence. However, if the sentence imposed exceeds the maximum in the receiving State then that State may adapt the sentence to its maximum sentence for that offence.

Ministerial Responsibility

The Secretary of State for Foreign and Commonwealth Affairs is responsible for the consular relations between the United Kingdom and Ghana. 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 and 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 offenders make up approximately 12% of the prison population in the United Kingdom. Some of those prisoners have no right to settle in this country and many 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 upon 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 outside the European Union 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 little or no links with the country in which they are detained and will therefore 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 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 only necessary where required by the relevant international arrangement.

The Government has made clear that, wherever possible, it will seek to negotiate bilateral prisoner transfer arrangements on the basis of 'no prisoner consent' agreement. A similar, no consent agreement was signed with the Federal Republic of Nigeria in January 2014. The bilateral agreement with Ghana is in line with this position and is intended to increase the number of prisoners who are transferred. 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 Ghanaian 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 any links they may have with the United Kingdom and with Ghana. 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 transfer. The Government is, also committed to working with the Ghanaian Government and is already supporting a prison reform programme. A prisoner has no formal right to appeal against a decision to transfer him or her to a prison in his or her own country of nationality but will be able to seek a judicial review of the decision in the usual way.

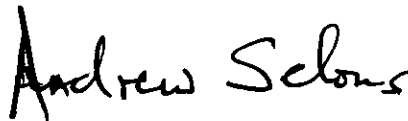
(ii) Financial

The cost of transferring a prisoner from the transferring State to the receiving State is a matter for the transferring State. The cost of the continued detention of a sentenced person following transfer is a matter for the receiving State.

The Government has set aside £500,000 under the Conflict Security & Stability (CSSF) migration fund to support prison reform in Ghana and the return of prisoners from the UK to Ghana. Some of these funds have already been released and the reform project is currently underway.

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 this Agreement.



ANDREW SELOUS

Parliamentary Under-Secretary of State
Ministry of Justice