

EXPLANATORY MEMORANDUM ON THE 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

Title of Agreement

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.

Command Paper Number 9191

Subject Matter

This Agreement provides for the transfer of prisoners between the United Kingdom and Iraq. It was signed in London on 8th October 2015.

The Agreement provides for the transfer to the United Kingdom from Iraq of British citizens, and for the transfer to Iraq from the United Kingdom of Iraqi nationals, where those persons have been deprived of their liberty by a court of the United Kingdom or of Iraq in the exercise of its criminal jurisdiction. It applies where the offence on account of which the sentence has been imposed would also constitute a criminal offence in the receiving jurisdiction; where the judgment is final; and where the person concerned has at least six months of the sentence left to serve. Transfer requires the consent of the prisoner, of the State in which the sentence was imposed and the State to which the prisoner wishes to transfer.

Ministerial Responsibility

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

Policy considerations

(i) General

Foreign national offenders make up approximately 11% of the prison population. Many of those prisoners will have few, if any, links with the United Kingdom. Others will have forfeited their right to remain here by their criminal behaviour. The Government is committed to ensuring that, where appropriate, they should be able to return to serve their sentences in their own country where they will live upon release. This will free up prison places in the UK and ensure that those who are transferred are effectively integrated into their home communities before release. 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 Council of Europe Convention on the Transfer of Sentenced Persons (1983) or the Commonwealth Scheme for the transfer of convicted offenders within the Commonwealth (1990, as amended).

Prisoner transfer agreements can provide for transfer either with or without the consent of the individual concerned. Wherever possible the Government will seek to negotiate an agreement which does not require the consent of the prisoner concerned. These agreements provide for the transfer

of an individual without that person's consent where that person is subject to expulsion or deportation at the end of the sentence. However, where it is not possible to conclude an agreement on this basis, the Government will seek to put in place an agreement which is conditional on the individual's consent. The bilateral Agreement with Iraq requires the consent of the individual concerned.

(ii) Financial

The cost of the continued enforcement of the sentence following transfer is borne by the receiving State (the State to which the prisoner is transferred).

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