



Treaty Series No. 51 (1998)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Hong Kong
Special Administrative Region of the
People's Republic of China

for the Transfer of Sentenced Persons

Hong Kong, 5 November 1997

[The Agreement entered into force on 19 March 1998]

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

November 1998

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE TRANSFER OF SENTENCED PERSONS

The Government of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom"), and the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised to conclude this agreement by the Central People's Government of the People's Republic of China, (hereinafter referred to as "the Parties"),

Desiring to co-operate in the transfer of sentenced persons to facilitate their reintegration into society,

Have agreed as follows—

ARTICLE 1

Definitions

For the purposes of this Agreement

- (a) "transferring Party" means the Party from whose jurisdiction the sentenced person may be, or has been, transferred;
- (b) "receiving Party" means the Party to whose jurisdiction the sentenced person may be, or has been, transferred;
- (c) "sentenced person" means a person who is required to be detained in a prison, a hospital or any other institution in the jurisdiction of the transferring Party to serve a sentence;
- (d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction.

ARTICLE 2

General Principles

A sentenced person may be transferred from the jurisdiction of the transferring Party to the jurisdiction of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

ARTICLE 3

Communication

Requests for transfer shall be conveyed through such Central Authority as may be notified from time to time by one Party to the other.

ARTICLE 4

Condition for Transfer

A sentenced person may be transferred only on the following conditions:

- (a) the conduct on account of which the sentence has been imposed would constitute a criminal offence according to the law of the receiving Party if it had been committed within the jurisdiction of its courts;

- (b) where the Hong Kong Special Administrative Region is the receiving Party the sentenced person is a permanent resident of, or has close ties with, the Region;
- (c) where the United Kingdom is the receiving Party the sentenced person is a British citizen or has close ties with the United Kingdom;
- (d) the sentence imposed on the sentenced person is one of imprisonment, confinement or any other form of deprivation of liberty in any institution:
 - (i) for life;
 - (ii) for an indeterminate period on account of mental incapacity, or
 - (iii) for a fixed period of which at least one year remains to be served at the time of the request for transfer. In exceptional circumstances this requirement may be waived.
- (e) the judgement is final and no further proceedings relating to the offence or any other offence are pending in the transferring Party;
- (f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that, where in view of age or physical or mental condition either Party considers it necessary, the sentenced person's consent may be given by a person entitled to act on his behalf.

ARTICLE 5

Procedure for Transfer

- (1) The Parties shall endeavour to inform the sentenced person of their right to transfer under this Agreement.
- (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. If the sentenced person wishes to be transferred he may express such a wish to the transferring Party or the receiving Party which shall consider such an expressed wish against the criteria set out in Article 4 before deciding whether to request a transfer.
- (3) Where a request for transfer has been made the transferring Party shall provide the receiving Party with the following information:
 - (a) a statement of the facts upon which the conviction and sentence were based and the text of the legal provisions creating the offence or a statement of the relevant law;
 - (b) the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remissions to which he is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
 - (c) a copy of the certificate of conviction and sentence.
- (4) Either Party shall, as far as possible, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether or not to agree to the transfer.
- (5) The transferring Party shall afford an opportunity to the receiving Party, if the receiving Party so desires, to verify through an official designated by the receiving Party, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(f) of this Agreement is given voluntarily and with full knowledge of the consequences thereof.
- (6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date at a place within the jurisdiction of the transferring Party agreed upon by both Parties.

ARTICLE 6

Continued Enforcement of Sentence

- (1) The receiving Party shall enforce sentences after transfer as if the sentence had the same duration or termination date as advised by the transferring Party and had been imposed in the receiving Party.
- (2) If a sentence is reduced or cancelled the transferring Party shall notify the receiving Party who shall give effect thereto.
- (3) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.
- (4) If the sentence is by its nature or duration incompatible with the law of the receiving Party that Party may, with the consent of the transferring Party, adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. The adapted sentence shall be no severer than that imposed by the transferring Party in terms of nature or duration.
- (5) The receiving Party may, if a sentenced person would be a juvenile according to its law, treat the sentenced person as a juvenile regardless of his status under the law of the transferring Party.
- (6) The receiving Party shall inform the transferring Party:
 - (a) when the sentenced person is discharged;
 - (b) if the sentenced person is granted conditional release; or
 - (c) if the sentenced person has escaped from custody before enforcement of the sentence has been completed.
- (7) The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence.

ARTICLE 7

Transit of Sentenced Persons

If either Party transfers a sentenced person from another jurisdiction, the other Party shall co-operate in facilitating the transit through its territory of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 8

Expenses

The expenses incurred in the transfer of the sentenced person or in the continued enforcement of the sentence after transfer shall be borne by the receiving Party. The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person.

ARTICLE 9

Settlement of Disputes

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE 10

Application of Agreement

This agreement shall apply in relation to the United Kingdom:

- (a) to England and Wales, Scotland, and Northern Ireland; and
- (b) to any territory for whose international relations the United Kingdom is responsible and to which this Agreement shall have been extended by an exchange of notes sent through the diplomatic channel.

ARTICLE 11

Final Provisions

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.¹
- (2) Either Party may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect three months after the date of receipt of the notice.

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

Done at Hong Kong, this fifth day of November one thousand nine hundred and ninety seven, in the English and Chinese languages, each text being equally authentic.

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

For the Government of the Hong Kong
Special Administrative Region of the
People's Republic of China

FRANCIS CORNISH

PETER LAI

¹The Agreement entered into force on 19 March 1998

大不列顛及北愛爾蘭聯合王國政府
和中華人民共和國香港特別行政區政府
關於移交被判刑人的協定

大不列顛及北愛爾蘭聯合王國(“聯合王國”)政府與中華人民共和國香港特別行政區(“香港特別行政區”)政府經中華人民共和國中央人民政府正式授權締結本協定,(下文稱為”締約雙方”),

願於移交被判刑人方面合作,以協助被判刑人重投社會,

協議如下:

第一條

釋義

就本協定而言，

- (a) 「移交方」指可能或已經從其司法管轄區移交被判刑人的締約一方；
- (b) 「接收方」指可能或已經向其司法管轄區移交被判刑人的締約一方；
- (c) 「被判刑人」指須被扣押在移交方司法管轄區內監獄、醫院或其他機構服刑的人；
- (d) 「刑罰」指法院在執行其刑事審判權期間下令有限期或無限期剝奪自由的任何處罰或措施。

第二條

通則

根據本協定規定，可將被判刑人由移交方司法管轄區移交至接收方司法管轄區，以執行對該名被判刑人所判處的刑罰。

第三條

聯繫渠道

移交請求須通過締約雙方的中心機關轉遞。締約一方可不時通知對方何謂中心機關。

第四條

移交條件

被判刑人只可在下列條件下被移交：

- (a) 引致該刑罰的行為如發生在接收方法院有司法管轄權的地方內，依據接收方的法律亦構成刑事罪行；
- (b) 倘香港特別行政區是接收方，被判刑人是香港永久性居民或與特別行政區有密切的聯繫；
- (c) 倘聯合王國是接收方，被判刑人是英國公民或與聯合王國有密切的聯繫；
- (d) 對被判刑人所判刑罰屬監禁、拘留、或在任何機構以任何其他形式剝奪其自由，刑期為：
 - (i) 終身；
 - (ii) 因精神失常而無確定刑期；或
 - (iii) 固定刑期而於請求移交時尚須服刑最少一年。在例外情況下，這項規定可予免除。
- (e) 判決已屬最終判決，並且在移交方內就該罪行或任何其他罪行無任何未決的進一步訴訟；
- (f) 移交方、接收方及被判刑人均同意移交，但如締約任何一方鑑於被判刑人的年紀或身體狀況或精神狀態而認為有需要，則被判刑人可由有權作為其代表的人代表其同意移交。

第五條

移交的程序

- (1) 締約雙方將盡力告知被判刑人其根據本協定可獲移交的權利。
- (2) 移交請求可由移交方或接收方向另一方提出。如被判刑人希望被移交，可向移交方或接收方表達此種意願，而移交方或接收方在決定是否提出移交要求之前，須按第四條所列的條件考慮被判刑人的意願。
- (3) 當移交請求提出後，移交方須向接收方提供以下資料：
 - (a) 據以定罪及判刑的事實的陳述，及把有關行為列為罪行的法律條文文本，或有關法例的陳述；
 - (b) 刑期屆滿日期(如適用的話)、被判刑人已服刑的時間，以及被判刑人因勞動、行為良好、審訊前拘留或其他原因而獲得的減刑；
 - (c) 定罪及刑罰證明書副本一份。
- (4) 締約任何一方均應在提出移交請求前，或決定是否同意移交前，因應對方的要求而盡可能向其提供任何有關的資料、文件或陳述書。
- (5) 如接收方在移交前希望透過其指派的官員，核實被判刑人是否依照本協定第四(f)條自願地同意移交並完全知道移交的後果，則移交方應給予接收方這樣的機會。
- (6) 移交方當局應於締約雙方商定的日期和移交方司法管轄區內的地點把被判刑人移交給接收方當局。

第六條

繼續執行刑罰

- (1) 接收方須於被判刑人移交後執行有關刑罰，如同該刑罰具有與移交方所指明相同的期間或終止日期並在接收方判處一樣。
- (2) 假如刑罰獲得寬減或撤銷，移交方須通知接收方，而接收方則須予以執行。
- (3) 於被判刑人移交後繼續執行刑罰，須適用接收方的法律及程序，包括規定有關監禁、拘留或其他剝奪自由方式的條件，及以假釋、有條件釋放、赦免或其他方式縮短監禁、拘留或其他剝奪自由方式的期間的法律及程序。
- (4) 假如刑罰在性質或刑期方面與接收方的法律不符，則接收方可在移交方同意下，根據本身法律對同類罪行規定的刑罰，修訂有關刑罰。修訂後的刑罰在性質或期限上，都不得比移交方所判刑罰更為嚴厲。
- (5) 假如根據接收方的法律，被判刑人是未成年人，則不論被判刑人根據移交方的法律屬何種地位，接收方都可以將被判刑人當作未成年人看待。
- (6) 在下列情況下，接收方須通知移交方：
 - (a) 當被判刑人獲釋放時；
 - (b) 假如被判刑人獲有條件釋放；或
 - (c) 假如被判刑人在刑罰執行完畢之前逃離監管。
- (7) 假如移交方提出要求，則接收方須提供其所要求的有關執行刑罰的資料。

第七條

被判刑人過境

假如締約任何一方從另一個司法管轄區移交被判刑人，則締約另一方須予合作，讓該被判刑人過境。打算進行該種移交的締約一方須事先將上述過境事宜通知締約另一方。

第八條

開支

移交被判刑人或在移交被判刑人後繼續執行刑罰所涉及的開支，須由接收方負擔。但接收方可以向被判刑人追討全部或部分移交費用。

第九條

解決爭議

因本協定的解釋、適用或執行產生的任何爭議，如締約雙方中心機關無法自行達成協議，則須通過外交渠道解決。

第十條

協定的適用範圍

就聯合王國而言，本協定適用於：

- (a) 英格蘭、威爾斯、蘇格蘭及北愛爾蘭；及
- (b) 由聯合王國負責其國際關係，並已通過外交途徑互換照會延伸適用本協定的任何地區。

第十一條

最後條款

- (1) 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的規定之日期後三十天開始生效。
- (2) 任何一方可隨時通知另一方終止本協定。在這種情況下，本協定於接獲該通知之日起的三個月後失效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

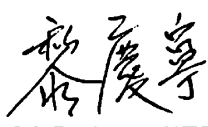
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大不列顛及北愛爾蘭聯合王國
政府代表



鄭富劭

中華人民共和國香港特別行政區
政府代表



黎慶寧

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