



HOUSE OF LORDS

International Agreements Committee

11th Report of Session 2022-23

**Scrutiny of International
Agreements: Protocol
amending the Additional
Protocol to the Convention
on the Transfer of
Sentenced Persons**

Ordered to be printed 19 January 2023 and published 20 January 2023

Published by the Authority of the House of Lords

HL Paper 136

International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010

Membership

The Members of the International Agreements Committee are:

[Lord Gold](#)

[Lord Morris of Aberavon](#)

[Lord Grimstone of Boscobel](#)

[Lord Oates](#)

[Baroness Hayter of Kentish Town](#) (Chair) [Lord Razzall](#)

[Lord Kerr of Kinlochard](#)

[Earl of Sandwich](#)

[Lord Lansley](#)

[Lord Udney-Lister](#)

[Baroness Liddell of Coatdyke](#)

[Lord Watts](#)

Declaration of interests

See Appendix 1.

A full list of Members' interests can be found in the Register of Lords' Interests:

<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Publications

All publications of the Committee are available at:

<https://committees.parliament.uk/committee/448/international-agreements-committee/publications/>

Parliament Live

Live coverage of debates and public sessions of the Committee's meetings are available at:

<http://www.parliamentlive.tv>

Further information

Further information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at:

<http://www.parliament.uk/business/lords>

Committee staff

The Committee staff are Simon Keal (Clerk), Andrea Ninomiya (Policy Analyst), Cathy Adams (Legal Adviser) and Maherban Lidher (Committee Operations Officer).

The Committee is grateful for the ongoing support provided by Ross Coron (Policy Analyst, Committees Scrutiny Unit).

Contact details

All correspondence should be addressed to the International Agreements Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 4840. Email HLIntlAgreements@parliament.uk

Twitter

You can follow the Committee on Twitter: [@HLIntlAgreements](#).

CONTENTS

	<i>Page</i>
Summary	2
Agreement reported for information	3
Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons	3
Entry into force, territorial scope and consultation	4
Appendix 1: List of Members and declarations of interest	6

SUMMARY

This report considers a new Protocol which amends the Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons,¹ laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG).

The Protocol extends the circumstances in which the UK can return a person to their state of nationality while serving a prison sentence without their consent. The Protocol was considered at the meeting of the Committee on 19 January 2023.

We report this Agreement to the House for information.

1 Foreign, Commonwealth and Development Office, *Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced persons*, CP 762 (December 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1120723/MS_10.2022_Protocol_amending_Additional_Protocol_to_Convention_Transfer_Sentenced_Persons.pdf [accessed 19 January 2023]

Scrutiny of International Agreements: Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons

AGREEMENT REPORTED FOR INFORMATION

Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons²

1. The Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons was laid on 1 December 2022. The scrutiny period is scheduled to end on 20 January 2023.
2. The UK is a party to the 1983 Council of Europe Convention on the Transfer of Sentenced Prisoners,³ which provides for the voluntary transfer of persons serving prison sentences who consent to be moved to their state of nationality to serve the remainder of their prison term. The UK has also ratified the 1997 Additional Protocol to the 1983 Convention⁴ (the Additional Protocol), which provides for the compulsory transfer of sentenced persons in certain circumstances. The Protocol amending the Additional Protocol (the Amending Protocol) expands the circumstances in which a sentenced person can be transferred to their state of nationality without their consent.
3. The Amending Protocol amends Articles 2 and 3 of the Additional Protocol so that:
 - When the person has returned to their state of nationality, aware that criminal proceedings are pending against them, the sentencing state may ask the state of nationality to carry out the sentence; and
 - When a deportation order has been issued against the person which is not connected to the sentence they are serving, the sentencing state may seek the transfer of the sentenced person without their consent.
4. The Amending Protocol also makes certain procedural changes. In particular, it clarifies that a person may be transferred compulsorily if they refuse to provide a statement on whether they consent.
5. The Explanatory Memorandum (EM) explains that, following the UK's departure from the European Union, the UK can no longer participate in EU

2 Foreign, Commonwealth and Development Office, *Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced persons*, CP 762 (December 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1120723/MS_10.2022_Protocol_amending_Additional_Protocol_to_Convention_Transfer_Sentenced_Persons.pdf [accessed 19 January 2023]

3 Council of Europe, *Convention on the Transfer of Sentenced Persons*, European Treaty Series 112, March 1983: <https://rm.coe.int/1680079529> [accessed 9 January 2023]

4 Council of Europe, *Additional Protocol to the Convention on the Transfer of Sentenced Persons*, European Treaty Series 167, December 1997: <https://rm.coe.int/168007f2c9> [accessed 9 January 2023].

arrangements for the transfer of prisoners and has therefore reverted to using arrangements established under the 1983 Council of Europe Convention and its Additional Protocol. Government policy is to keep up to date with amendments to the 1983 Convention in order to have the strongest and most effective prisoner transfer framework possible. It is not clear from the EM whether the arrangements are equivalent to those which applied when the UK was an EU member.

Entry into force, territorial scope and consultation

6. The Amending Protocol is not yet in force. It will enter into force on the first day of the month, three months after the date on which all parties to the Additional Protocol have ratified it. There are 40 states party to the Additional Protocol;⁵ currently, only eight of those states have ratified the Amending Protocol.⁶
7. Pending its entry into force, the Amending Protocol provides for it to be applied provisionally between any states which have both ratified the Amending Protocol and declared their acceptance of provisional application in relation to states making the same declaration. The UK intends to make a declaration accepting provisional application of the Amending Protocol. This declaration will take effect from the first day of the second month following its receipt by the Secretary General of the Council of Europe.
8. The Government considers there are immediate benefits in applying the Amending Protocol provisionally before all the parties to the Additional Protocol have completed the formalities to enable the Amending Protocol to enter into force. We note, however, that in the short term these benefits will be limited, as of the eight states which have ratified the Amending Protocol, only six have made declarations accepting provisional application.⁷
9. The EM notes that justice is a devolved matter in Scotland and Northern Ireland, and that these two devolved administrations were consulted on the Amending Protocol and were content for it to be ratified.
10. The Amending Protocol will apply to the UK only and does not extend to the Crown Dependencies or Overseas Territories. The Government has consulted the governments of the Crown Dependencies and Overseas Territories and will extend the Amending Protocol to them when they are ready to implement both the Additional Protocol and the Amending Protocol.⁸
11. **We note that the Government is seeking to keep up to date with amendments to the Council of Europe Convention in order to have the strongest and most effective prisoner transfer framework possible. It is not clear, however, whether this framework is equivalent to that which applied when the UK was a member of the European Union.**

5 Position at 9 January 2023.

6 *Ibid.*

7 Austria, Italy, Lithuania, Switzerland, Ukraine, Holy See [position at 9 January 2023].

8 Foreign, Commonwealth and Development Office, *Explanatory memorandum: Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons*, para 10.4: <https://www.gov.uk/government/publications/protocol-amending-the-additional-protocol-to-the-convention-on-the-transfer-of-sentenced-persons-ms-no102022> [accessed 9 January 2023] As at 9 January 2023, the Additional Protocol had been extended only to Jersey.

12. **We report the Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Prisoners to the House for information. We highlight, in particular, our comments in paragraph 11.**

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Gold
Lord Grimstone of Boscobel
Baroness Hayter of Kentish Town
Lord Kerr of Kinlochard
Lord Lansley
Baroness Liddell of Coatdyke
Lord Morris of Aberavon
Lord Oates
Lord Razzall
The Earl of Sandwich
Lord Udny-Lister
Lord Watts

Declarations of Interest

Lord Gold
Director, Gold Collins Associates Ltd
Principal, David Gold & Associates LLP

Lord Grimstone of Boscobel
Member of Equilibrium Gulf's International Advisory Board (Bahrain)

Baroness Hayter of Kentish Town
Senior Non-Executive Director, Association of British Insurers

Lord Kerr of Kinlochard
Chairman, Centre for European Reform

Lord Lansley
Director, LOW Associates Ltd
Chair, UK-Japan 21st Century Group
Trustee, Radix

Baroness Liddell of Coatdyke
Association Member, Bupa
Chair, Annington Ltd
Honorary Vice President, Britain-Australia Society Education Trust
Trustee, Northcote Educational Trust

Lord Morris of Aberavon
No relevant interests

Lord Oates
Chair, Advisory Committee, Weber Shandwick UK
Director, H&O Communications Ltd

Lord Razzall
Director, North Atlantic Mining Associates Limited
Director, ZeU Technologies Inc
Shareholdings, ZeU Technologies Inc
Shareholdings, St-Georges Eco-Mining Corporation
Shareholdings, Tintra plc

Earl of Sandwich
No relevant interests

Lord Udny-Lister

Advisor to the Group Chairman of HSBC

Lord Watts

No relevant interests