

## Out of many, one people--exodus planned for Jamaican prisoners

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**Public Law analysis: What are the challenges facing David Cameron's proposal to build a £25m prison in Jamaica where it is proposed that prisoners of Jamaican heritage in British jails be sent to spend the rest of their sentence? Vijay Jagadesham, barrister and expert in prison and immigration law at Garden Court North Chambers, comments on these proposals.**

### Background

*The UK is to spend £25m on building a prison in Jamaica so that foreign criminals in the UK can be sent home to serve sentences in the Caribbean. More than 600 Jamaican nationals are in UK jails but cannot be deported because of Jamaica's poor prison conditions. The Prime Minister, David Cameron, announced the deal as he began a visit to Jamaica on 30 September 2015. The announcement of UK funding for a Jamaican prison aims to break a deadlock in negotiations over a prisoner transfer deal between the two countries. It is claimed the foreign aid-funded deal could save UK taxpayers £10m a year when transfers begin in 2020. The average annual overall cost of a prison place in England and Wales for 2012/13 was about £36,000, according to National Offender Management Service accounts.*

### What currently prevents the UK sending foreign criminals back to Jamaica?

The Repatriation of Prisoners Act 1984 (RPA 1984) provides for the transfer of sentenced prisoners between the UK and other foreign jurisdictions. The Secretary of State for Justice can issue a warrant to transfer a prisoner to another country that has a prisoner transfer agreement (PTA) with the UK, where both the Secretary of State and the receiving country consent to the transfer. Depending on the terms of the agreement, the prisoner's consent may also be required.

The announcement from David Cameron on 30 September 2015 wrongly gave the impression that Jamaica had agreed to a PTA. This has since been reported to be a 'misrepresentation' and the Jamaican Security Minister is said to have made it clear that all the Jamaican Government has agreed to is the exploration of the 'possibility of a prisoner transfer' (*Guardian*, 13 October 2015). It is apparent that, at present, there is little appetite for a PTA in Jamaica, bearing in mind that it declined to ratify an agreement proposed by Gordon Brown in 2007.

In addition, it would be contrary to the UK's legal obligations to send a prisoner to a country where, for example, this would lead to a breach of art 3 of the European Convention on Human Rights (which prohibits torture and inhuman and degrading treatment) or where this would be contrary to the 1951 Convention relating to the Status of Refugees. That is in the light of what might happen to the prisoner during or after their release from custody.

### Would the building of a new prison satisfy these concerns?

In short, no. There is little point in building a prison to receive prisoners from the UK where Jamaica has not agreed to the necessary PTA.

Furthermore, if a prisoner's fear of mistreatment relates to what might happen to them after their release from detention, then a UK-built prison would not remove that risk. The same would apply to a case where the prisoner fears what might happen to them in prison. I have been involved in various cases where Jamaican nationals would be at serious risk from criminal networks if they were returned.

### How do prisoner transfer deals operate in practice?

A PTA is necessary but this is not all that is required.

According to the Home Office, the UK has over 100 PTAs and the vast majority of these require the consent of the prisoner and the receiving state (see the Home Office Guidance on Repatriation for Foreign National Offenders). There is some provision for repatriations to take place without a prisoner's consent--see RPA 1984, s 1(1)(c), as amended by the Police and Justice Act 2006 and the Additional Protocol to the Council of Europe Convention on the Transfer of

Sentenced Persons. Further, in the case of certain EU Member States, the Member State's consent is not required--see Council Framework Decision 2008/909/JHA.

Typically a prisoner has to make an application through the National Offender Management Service who will then assess the application.

### **Could prisoner transfer deals impact on a prisoner's access to legal redress in the UK?**

There is clearly a concern that conditions in prisons in some countries will be far below those that exist in UK prisons, despite the fact that the individual is serving a sentence imposed by the UK. A number of the countries with which the UK has PTAs have been the subject of international criticism in relation to their prison systems. Furthermore, transferred prisoners are likely to find that practically speaking they are prevented from accessing legal advice in the UK. They will thus be prevented or seriously inhibited in pursuing, for example, applications in the family courts or appeals in the Immigration and Asylum Chamber.

The decision of the Irish Supreme Court in *Sweeney v Governor of Loughan House Open Centre & others* [2014] IESC 42 in July 2014 also illustrates that repatriation is not straightforward in terms of prisoner release. Generally speaking, a repatriated prisoner will be subject to the remission of sentence system that exists in the receiving country. Accordingly, this could lead to a prisoner spending even more time in prison than would have been the case if he had remained in the UK. In *Sweeney* the Irish Supreme Court held that a prisoner sentenced to 16 years imprisonment in England and who was later transferred to Ireland should have been released after eight years, as that was the 'true' sentence he would have served in the UK. This was despite Irish law requiring release at a later date if a sentence of 16 years imprisonment had been imposed in that country.

### **What role would the UK have in the running of any prison in Jamaica?**

In general, a repatriated prisoner will be incarcerated in a prison which is being run in accordance with the law of the host country and the regime concerning his imprisonment. It is difficult to see what, if any, role the UK would be able to play in the running of a prison on Jamaican soil, irrespective of whether or not the UK contributed to it being built.

*Interviewed by David Bowden.*

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