



# Home Office

Open Government Unit  
National Offender Management Service

12 May 2005

ref: 255

Q1. Please supply to me details of your policy regarding cross border transfers to the UK, including but not limited to information about timescales for a decision, and whether circumstances of the prisoner's family are deemed to be a material consideration in determining the outcome of such applications.

A. The Repatriation of Prisoners Act 1984 governs the transfer of prisoners to and from the United Kingdom. The Act enables the Secretary of State to issue a warrant for the transfer of a prisoner where there is an international arrangement in place between the United Kingdom and the country concerned providing for the transfer of prisoners. The United Kingdom is a party to two multi-party agreements, the Council of Europe Convention on the Transfer of Sentenced Persons, and the Commonwealth Scheme for the Transfer of Convicted Offenders. In addition, the UK has concluded bilateral prisoner transfer agreements with 16 states.

Prisoner Transfer Agreements usually set out a small number of conditions that an application must meet before repatriation. These are generally:

- That the prisoner is a national of the country to which transfer is sought;
- That the sentence is final and enforceable (*i.e.* there are no outstanding appeals or other legal proceedings in the sentencing State);
- That the prisoner has at least 6 months of the sentence left to serve; and
- The offence for which the prisoner has been sentenced is an offence in both States involved.

Conditions may vary where transfer is governed by a bilateral agreement.

An application from a British national normally resident in the UK that meets these conditions is likely to be approved. The fact that a prisoner has close family resident in the UK will normally count in the prisoners favour. However, family circumstances do not play a significant part in the consideration. The residence of family members will only become a significant factor if the prisoner himself has only tenuous links with the UK. If, for example, the prisoner is British but has not lived in the UK for a significant number of years, such a request might well be refused. The fact that the prisoner had close family resident here would be taken as a factor favouring transfer.

### **Procedures for Transfer to England and Wales**

The procedure prior to the application being referred to the British authorities is a matter for the sentencing State and will vary from country to country. The British authorities do not hold information on these arrangements.

Once an application is received by the Cross Border Transfer Section, checks will be made with the Passport Agency to confirm that the prisoner is a British national, with Scotland Yard to confirm if the prisoner has any outstanding charges in the UK, and with the Home Office to confirm that the offence is an offence under UK law and that the sentence does not exceed the maximum sentence available under UK law for the particular

offence. If all the enquiries are positive, and the prisoner was normally resident in the UK prior to his current offence, then the British authorities will normally give its consent to the prisoners transfer.

If a decision is made to approve a request, the Cross Border Transfer Section will write to the appropriate authority in the receiving jurisdiction confirming that the prisoner is a British national and that the UK has sufficient legislation to continue to enforce the sentence. It will also provide information about how the sentence will be administered following transfer. If the prisoner is serving a sentence of life imprisonment it will be necessary first to obtain a provisional tariff. This is the minimum period that the prisoner will be required to serve in England and Wales before becoming eligible for consideration for release on parole licence. The provision of this information is necessary to enable the prisoner and the sentencing jurisdiction to take an informed decision about the consequences of the transfer.

The Cross Border Transfer Section will write separately to the British Embassy in the country concerned in order that it can obtain the prisoners consent to the transfer. If the sentencing State is willing to give its consent it will reply formally consenting to the transfer and asking us to arrange a suitable date for transfer. Once a date has been arranged UK prison officers will travel to the country concerned and will bring back the prisoner. The prisoner will continue to serve the sentence imposed abroad under the provisions of warrant issued by the Secretary of State in accordance with the Repatriation of Prisoners Act 1984.

There are no formal time limits for dealing with applications for repatriation either to or from England and Wales. However, the Cross Border Transfer Section aims to respond to a request from a foreign jurisdiction within 9 weeks of receipt of the application. However, requests from prisoners serving sentences of life imprisonment may take considerably longer than this because of the need for a provisional tariff to be set.