

2 May 2014

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REQUEST FOR INFORMATION under FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

Thank you for your e-mail dated 7 April 2014 to gaolinfo seeking information under Freedom of Information about the transfer of prisoners from Peru.

For the avoidance of confusion, I have replicated your questions below:

Who decides about transferring prisoners from foreign countries?

Who pays for the prisoners transfer?

Are Scottish Prison officers sent to Peru to take custody of the detained and who pays for the costs?

Who funds prison costs for the detained if transferred from other countries?

Will the detainee have to serve the same sentence or will it be reduced like all other inmates?

Firstly I should explain that there is no legal entitlement to repatriation. However, the Repatriation of Prisoners Act 1984 enables the transfer of prisoners between the UK and other countries or territories to serve the remainder of their sentences in their home countries. The Act applies wherever there are international arrangements providing for such transfers, and the UK is party to a number of such bilateral and multilateral arrangements, including the Council of Europe Convention on the Transfer of Sentenced Persons, a Commonwealth Scheme for the Transfer of Convicted Offenders and the individual bilateral prisoner transfer agreements. The UK has a Prisoner Transfer Agreement with the Government of the Republic of Peru.

A sentenced person may be eligible for transfer if that person meets the following conditions:-

- If she/he is considered a national of the country to which she/he wishes to be repatriated;
- If the offence for which she/he is tried is a criminal offence under the law of that country;
- If she/he is not appealing against conviction or sentence; and
- If she/he has at least 6 months of the sentence left to serve.

Both countries **must** agree to the terms of the transfer. The prisoner also has to give her/his consent.

As the receiving state, Scotland administers sentences in accordance with the “continued enforcement” procedure as described in article 10 of the Council of Europe Convention on the Transfer of Sentenced Persons. The “continued enforcement” procedure means that the maximum sentence to be served following transfer would be the amount of the original sentence which remained, after deduction of the period already served and of any remission earned in the foreign jurisdiction up to the date of transfer. If the sentence imposed in the foreign jurisdiction was longer than, or of a different nature from the sentence which could be imposed for the same offence in Scotland, it would be adapted to the nearest equivalent sentence which was available under the law of Scotland without being longer or more severe than the original sentence. However, adaptation would only take place with the consent of the sending authority and the sentenced person. If the sending authority did not consent to our request to adapt the sentence then the application for repatriation would be refused.

Once a transfer has been approved and before it can be effected, the prisoner will be required to pay the cost of the fare to the UK, or arrange for it to be paid by someone else and sign an undertaking to that effect. The Scottish Prison Service funds the cost for prison staff to travel to any foreign jurisdiction to escort a prisoner to Scotland. In the case of a foreign prisoner detained in Scotland who wishes to be repatriated abroad, the receiving State will come to Scotland to escort the prisoner to her/his home country.

Yours sincerely

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