

REPORT

by

THE MINISTER FOR JUSTICE

Ms. Helen McEntee

to

the Houses of the Oireachtas

on the operation of

THE TRANSFER OF SENTENCED PERSONS ACTS,

1995 and 1997

for the period

1 January, 2021 - 31 December, 2021

(In accordance with Section 11 of the Act)

INTRODUCTION

Foreword

- 1.0 The Council of Europe Convention on the Transfer of Sentenced Persons was ratified by Ireland following the passing of the Transfer of Sentenced Persons Act, 1995 and came into effect on 1 November, 1995. The Act provides the legislative basis for the operation of the Convention between Ireland and other parties to the Convention.

The Transfer of Sentenced Persons (Amendment) Act, 1997 provided for the transfer into and out of the State of persons who have been sentenced to periods of imprisonment greater than the maximum penalties allowed under Irish law for similar offences.

This is the twenty-seventh Annual Report, presented in accordance with Section 11 of the 1995 Act, outlining details of matters relating to the operation of the Acts in 2021.

The Operations Directorate of the Irish Prison Service administer the Transfer of Sentenced Persons function on behalf of my Department.

Purpose of the Convention/Legislation

- 1.1 The Transfer of Sentenced Persons Acts, 1995 and 1997 provide a mechanism whereby non-nationals serving sentences in Ireland may apply to serve the remainder of their sentences in their own countries, where those countries are party to the Council of Europe Convention on the Transfer of Sentenced Persons. Similarly, Irish persons who are imprisoned overseas in such countries may apply to serve the remainder of their sentences in Ireland.

The Convention is open to States outside Europe and the Government supports the Council of Europe policy of encouraging states to ratify and operate the Convention. There are over sixty states operating the Convention at present.

The policy of the Convention, which is based on humanitarian considerations, is to overcome the difficulties posed for prisoners serving sentences in foreign jurisdictions, such as absence of contact with relatives and differences in languages and culture. In this regard, it has been long established Government policy that, whenever possible, prisoners should be permitted to serve their sentences close to their families.

The Convention provides a procedural framework for such transfers and seeks to provide a simple and relatively expeditious mechanism whereby the repatriation of sentenced persons may take place. The Convention sets out six conditions which must be fulfilled if a transfer is to be affected and these conditions are also set out in the Transfer of Sentenced Persons Acts, 1995 and 1997. It should be noted, however, that, even where all of the conditions are satisfied, there is no obligation on a State to comply with a transfer request. While the Convention does not require that the requested state give reasons for a refusal to agree to a transfer, the Irish legislation provides that, where practicable and where the interests of justice do not so preclude, a statement specifying the grounds for the refusal will be provided to the applicant or requesting state as appropriate.

The conditions which must be met are that:

- 1) The offender seeking a transfer is regarded as a national of the State to which the transfer is sought (the administering State),
- 2) The order or judgement under which the sentenced person was sentenced is final,
- 3) There is, at the time of the receipt of the request for transfer, at least six months of the sentence remaining to be served,
- 4) The sentenced person consents to the transfer,
- 5) The act or omission constituting the offence would also constitute an offence in the administering State, and
- 6) Both States consent to the transfer.

Under the terms of the Convention, the two States involved in processing a transfer request are required to exchange information about the sentenced person in order to ensure that the conditions above are met. This information includes a copy of the court judgement and a copy of the law on which it is based, sentence administration particulars and medical/social reports. Reports from An Garda Síochána and police forces in the other State are also sought to determine the circumstances of the offence and to ensure that there are no other charges outstanding against the person. In cases where the prisoner has already served a very long period, it can be a time consuming to trace all the necessary information. This process is necessary, however, to ensure that all parties (the offender, the sentencing State and the administering State) are fully aware of the legal consequences of a transfer and that an informed decision can be made by all concerned. The offender must be informed in writing in his or her own language of the legal consequences of the transfer.

Due to the complexity of the documentation required to affect a transfer between other States and Ireland, the process of information exchange can be time consuming.

Where a sentenced person is seeking to transfer into this country, legal confirmation is obtained from the State's legal officers that the offence for which the sentence is being served would also constitute an offence under Irish law. When all parties have consented to a transfer, an application is made to the High Court for the necessary warrant authorising the person's transfer from the sentencing State and his or her subsequent imprisonment here. Every effort is made to process each application as speedily as possible, once the three-way consent between the two States and the sentenced person is forthcoming.

In 2014 a High Court judgement relating to the transfer of prisoners from the United Kingdom was appealed to the Supreme Court. The judgements in this case were received in July 2016 and are currently being examined in full by officials in my Department to determine the legislative and administrative changes that will be required to address the issues in relation to any future inward transfers of prisoners. In the interim, all inward applications were paused on legal advice and applications were notified. A subsequent Appeal Court ruling in another case in 2018 directed that the Minister must consider each application on its own merits under the existing legislation and give detailed reasoning for the decision reached.

Progress in 2021

- 1.2.1** During the period covered by this report there were no inward transfers to the state and 6 prisoners transferred out of the State. In total, one hundred and fifty four prisoners have now transferred here from abroad and two hundred prisoners have transferred out since the Act came into operation on 1 November, 1995. My Department continues to co-operate with the Irish Commission for Prisoners Overseas (ICPO) in providing information on applications.

APPLICATIONS FOR TRANSFER INTO IRELAND

Work Processed in 2021

2.0 Table "A" details the work processed in 2021 in respect of applications received for transfer into this jurisdiction. In addition to the applications received in 2021 (12) it also includes applications (13) which were under consideration from the previous years.

Table A - Inward Transfers - Work Processed in 2021

Number of Applications Received in 2021	12
Number of Applications from previous years active at start of 2021	13
Total applications for processing in 2021	25
Total number of applications managed in 2021	14
• Number approved pending transfer/consents	0
• Number Refused in 2021	10
• Number Withdrawn in 2021	3
• Number Deemed Closed in 2021	0
• Number released in 2021	1
Number of applications active at end of 2021 (see Table D)	11

Table B – Applications by state - 2021

Sentencing State	Number of applications received
UK	4
Northern Ireland	2
Andorra	1
Portugal	1
Sweden	4
Total no. of inward applications received in 2021	12

Comparisons to previous years

2.1 A total of five hundred and seventy five applications have been received for transfer into this jurisdiction since the Act came into operation in November, 1995. Table "C" shows a breakdown of these applications by jurisdiction and by year of application.

Table C - Inward Transfers, Applications Received

	<i>1995</i> -	<i>2006</i> -	<i>2016</i> -	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
	<i>2005</i>	<i>2015</i>	<i>2017</i>					
UK	266	168	5	6	7	4	4	460
USA	6	3	-	-	-	1	-	10
Canada	1	2	-	-	-	-	-	3
Cyprus	-	-	-	-	1	-	-	1
Czech Republic	-	-	-	1	-	1	-	2
Hungary	-	1	-	-	-	-	-	1
Hong Kong	1	-	-	-	-	-	-	1
Greece	1	-	-	-	-	-	-	1
Isle of Man	3	-	-	-	-	-	-	3
Scotland	-	1	2	-	-	-	-	3
Estonia	-	1	-	-	-	-	-	1
Latvia	-	1	-	-	-	-	-	1
Lithuania	-	2	-	-	-	-	-	2
Spain	6	11	2	1	-	-	-	20
Sweden	-	2	-	-	-	-	4	6
Italy	1	2	-	-	-	-	-	3
Panama	2	-	-	-	-	-	-	2
Netherlands	1	1	-	-	-	-	-	2
Japan	1	3	-	-	-	-	-	4
Australia	1	5	2	1	-	1	-	10
Trinidad & Tobago	1	-	-	-	-	-	-	1
Germany	-	3	1	-	-	-	-	4
N. Ireland	-	12	4	1	1	1	2	21
Switzerland	-	1	-	-	-	-	-	1
Ecuador	-	1	-	-	-	-	-	1
Costa Rico	-	1	-	-	-	-	-	1
Belgium	-	4	3	-	-	-	-	7
France	-	-	1	-	-	-	-	1
Andorra	-	-	-	-	-	-	1	1
Portugal	-	-	-	-	-	-	1	1
Total	291	225	20	10	9	8	12	575

Inward Transfers Completed

2.2 A total of one hundred and fifty four prisoners have now transferred into this jurisdiction since the Act came into operation in November, 1995. Table "D" shows a breakdown of the number of prisoners transferred up to the end of 2021 by jurisdiction and by year of transfer.

Table D - Inward Transfers Completed

	<i>1996</i> <i>-</i> <i>2000</i>	<i>2001</i> <i>-</i> <i>2005</i>	<i>2006</i> <i>-</i> <i>2010</i>	<i>2011</i> <i>-</i> <i>2015</i>	<i>2016</i> <i>-</i> <i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
UK	74	30	24	5	-	-	-	-	-	133
USA	3	1	-	-	-	-	-	-	-	4
Canada	1	-	-	-	-	-	-	-	-	1
Hong Kong	1	-	-	-	-	-	-	-	-	1
Isle of Man	1	-	-	-	-	-	-	-	-	1
Panama	-	1	-	-	-	-	-	-	-	1
Belgium	-	-	-	1	-	-	-	-	-	1
Spain	-	-	3	2	1	-	-	-	-	6
Japan	-	-	1	-	-	-	-	-	-	1
Northern Ireland	-	-	1	1	-	-	-	-	-	2
Hungary	-	-	-	1	-	-	-	-	-	1
Italy	-	-	-	1	-	-	-	-	-	1
Estonia	-	-	-	1	-	-	-	-	-	1
Total	80	32	29	12	1	-	-	-	-	154

Applications for inward transfer under consideration at end of 2021

2.3 At the end of 2021, there were 11 inward applications under active consideration. The status of these particular applications, which were at various stages of consideration (some more advanced than others), is listed in Table "E".

Table E - Inward Transfers, Active Applications at end of 2021

	<i>Applied 2014 & 2015</i>	<i>Applied 2016 & 2017</i>	<i>Applied 2018 & 2019</i>	<i>Applied 2020</i>	<i>Applied 2021</i>	<i>Total</i>
Awaiting advice from CSSO and other reports	-	-	-	-	8	8
Awaiting further papers from sentencing state/applicant	-	-	-	-	1	1
Final stages of processing	1	-	-	1	-	2
Total	1	0	0	1	9	11

APPLICATIONS FOR TRANSFER OUT OF IRELAND

Work Processed in 2021

3.0 Table "F" details the work processed in 2021 in respect of applications received for transfer out of this jurisdiction. In addition to the applications received in 2021 (13) it also includes applications (12) which were active from previous years.

Table F - Outward Transfers, Work Processed in 2021

Number of Applications received in 2021	13
Number of Applications from previous years, active at start of 2021	12
Total applications for processing in 2021	25
Total applications managed in 2021	14
• Number of Transfers completed in 2021	6
• Number approved awaiting transfer due to COVID restrictions in 2021	1
• Number of applications withdrawn in 2021	7
Total number of cases active at end of year	11

Table G – Outward applications by state – 2021

To Receiving State	Number of applications received
UK	4
Northern Ireland	6
Romania	3
Total applications received	13

Six transfers were successfully executed in 2021, 3 to the UK and 3 to Romania.

Seven applications were withdrawn during the processing of their application in 2021.

Comparisons to previous years

3.1 At year's end, a total of five hundred and fifty three applications had been received for transfer out of this jurisdiction since the Act came into operation in November, 1995. Table "H" shows a breakdown of these applications by jurisdiction and by year of application.

Table H - Outward Transfers, Applications Received.

	<i>1996 - 2006</i>	<i>2007 - 2015</i>	<i>2016 – 2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
UK	121	124	11	2	9	7	4	278
NI	58	41	7	4	-	5	6	121
France	1	-	-	-	-	-	-	1
Germany	4	3	-	-	-	1	-	8
Netherlands	12	26	-	-	1	-	-	39
Sweden	1	1	1	-	-	-	-	3
Scotland	8	6	1	-	-	-	-	15
Canada	1	-	-	-	-	-	-	1
Belgium	1	3	1	-	-	-	-	4
Italy	3	-	-	-	-	-	-	3
Spain	2	4	-	-	-	1	-	7
Portugal	1	4	1	-	-	2	-	8
Albania	2	2	-	-	-	-	-	4
USA	1	-	-	-	-	-	-	1
Lithuania	-	9	-	-	-	-	-	9
Latvia	-	5	-	-	-	-	-	5
Poland	-	11	2	-	-	1	-	14
Czech Republic	-	3	-	-	-	-	-	3
Moldova	-	1	1	-	-	-	-	2
Bulgaria	-	1	-	-	--	-	-	1
Switzerland	-	1	-	-	-	-	-	1
Romania	-	6	3	-	3	5	3	20
Finland	-	1	-	-	-	-	-	1
Australia	-	2	-	-	-	-	-	2
Hungary	-	-	1	-	-	-	-	1
Norway	-	-	1	-	-	-	-	1
Total	216	253	30	6	13	22	13	553

Outward Transfers Completed

3.2 A total of two hundred prisoners have now transferred out of this jurisdiction since the Act came into operation in November, 1995. Table "I" shows a breakdown of the number of prisoners transferred to date by jurisdiction and by year of transfer.

Table I - Outward Transfers Completed.

	<i>1996 - 2005</i>	<i>2006 -2015</i>	<i>2016 -2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
UK	38	63	6	3	-	4	3	117
N. Ireland	21	16	2	-	-	-	-	39
Holland	-	-	-	1	-	1	-	2
Sweden	1	-	1	-	-	-	-	2
Netherlands	1	21	2	-	-	-	-	24
Germany	1	-	-	-	-	-	-	1
Scotland	1	1	-	-	-	-	-	2
USA	-	1	-	-	-	-	-	1
Poland	-	1	-	-	-	-	-	1
Spain	-	1	-	-	-	-	-	1
Lithuania	-	1	2	-	-	-	-	3
Bulgaria	-	1	-	-	-	-	-	1
Czech Republic	-	1		-	-	-	-	1
Albania	-	-	1	-	-	-	-	1
Romania	-	-	1	-	-	-	3	4
Total	63	107	15	4	0	5	6	200

Applications for outward transfer under consideration at end of 2021

3.3 At the end of 2021, there were 11 applications under active consideration. These applications are listed in Table "J". Of these applications, three were under preliminary examination by the Irish Prison Service and nine were awaiting the decision of the receiving state.

Table J - Outward Transfers, Active Applications at end of 2021

	<i>Total</i>
Awaiting decision of sentencing state	1
Awaiting decision of receiving State	8
Approved late December – transfer to be effected March 2022	1
Application awaiting result of An Garda Síochána/DPP investigation	1
<i>Total</i>	11

CONCLUSION

4.0 As was the case in previous years, applications for both inward and outward transfers were received from persons serving both determinate and indeterminate sentences. The nature of the offences differed from case to case, as did the length of sentences being served. The offences ranged from possession of controlled substances to assault and murder. The imposed sentences ranged from two years to life imprisonment. The security classification of the applicants differed according to the severity of the offence and the length of sentence remaining. Each application was considered on its own merits and in accordance with the procedures and requirements of the Convention.

The report clearly indicates that there has been no inward transfer to this jurisdiction in the past 4 years, this primarily is due to the need for legislative change to accommodate the requirements of the Council Framework Decision 2008/909/JHA.

The Council Framework Decision 2008/909/JHA of 27 November 2008 relates to the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. Legislation to transpose Framework Decision 2008/909/JHA is being progressed and is on the most recent Government Legislative Programme Priority List for publication.

Significant issues have arisen in respect of inward prisoner transfers, most notably from the United Kingdom. After Brexit, UK transfers *will* not fall under the Framework Decision and will continue to take place under the Convention and existing 1995 Act. Work is continuing on amendments to the Convention regime, and it is the intention to progress these necessary changes by way of amendments to the current Bill.

The time-scale for completing an application continues to vary significantly from one case to another as a result of the extensive documentation which must be exchanged between both jurisdictions in order to allow an application to be fully considered. My Department continues to make every effort to ensure that each application is processed as promptly as possible and I am confident this will continue in 2022. My officials will also continue to examine legal judgements relating to the transfer of prisoners from other jurisdictions to determine the legislative and administrative changes required to allow for the processing of all applications.

2021 has again been significantly more challenging in dealing with all applications received due to the constraints imposed on all departments while working during a worldwide pandemic which has restricted international travel and has had an adverse impact on effecting transfers out of the country.

I would like to acknowledge the efforts of the Irish Prison Service to ensure that all applications received were administered according to the provisions of the Act in so far as possible given the restrictions in place on a worldwide scale.

There were several enquiries to my Department during the year from Irish persons imprisoned abroad, or from the families of such persons, as to the possibility of transfer here. Where the country in which they were detained also operated prisoner transfers under the Convention, my Department routinely wrote to the appropriate authorities in those jurisdictions to request that the application for transfer be processed. The prisoner or the family concerned were also written to and advised as to the appropriate steps involved in making an application. Wherever possible, the persons concerned were kept informed of progress with the transfer application.

Given the challenges presented in 2021, I would especially like to acknowledge the co-operation of the authorities in those jurisdictions with whom we have had contact in connection with these transfers. In particular, I would like to acknowledge the co-operation of the authorities in the United Kingdom with whom we have completed the majority of our prisoner transfers over the lifetime of the convention. I must also acknowledge the co-operation of the Garda Commissioner, the Chief State Solicitor and the Attorney General and their staff without whose knowledge and professionalism the successful transfer of sentenced persons into and out of Ireland could not be completed. I would also like to thank the Irish Prison Service and the Probation Service for their important contributions to the process.

Finally, I wish to assure the members of the Oireachtas that my Department's established policy in this area will continue. As Minister, I will continue to consider applications from prisoners both here and abroad to transfer to their home jurisdiction in order to complete their sentences close to their families and friends. In line with the spirit of the Convention, I believe this will assist their rehabilitation and reintegration into their communities, which ultimately leads to safer communities. I am confident that we will see future progress being made in this significant area in the coming years.

MINISTER FOR JUSTICE

April 2022