



## Repatriation

Serving a prison sentence abroad is difficult for both the prisoner and his or her family. Prisoners may face language barriers, an unfamiliar legal system and loneliness among other problems. Many families cannot afford to visit their family member often or at all. This adds to the anxiety and stress of having a family member in prison.

The Council of Europe Convention on the Transfer of Sentenced Persons allows prisoners to apply to be transferred home to serve their prison sentence in their own country. Ireland is one of many countries that is a signatory to this Treaty.

In order for a transfer to take place there has to be three-way consent. The prisoner, the sentencing country and the prisoner's home country all have to agree to the transfer. The prisoner's consent must be given willingly and in writing. Please note that you do not have a right to be transferred but you do have a right to apply for a transfer and to have your application heard.

### Eligibility for Transfer:

There are four conditions that a prisoner must meet in order to be eligible to apply for a transfer.

**1. The prisoner must be a citizen of the country to which they wish to be transferred.**

In some cases it will be enough if the prisoner is not a citizen but a permanent resident of a country.

**2. The sentence is final.**

A prisoner cannot apply for transfer before they face trial or until after all appeals have been heard.

**3. There must be at least six months left to serve on the sentence.**

**4. The crime that the prisoner is convicted of must also be a crime in his or her home country.**

### Application Process:

This will vary somewhat from country to country. Usually the first step is for the prisoner to inform the prison authorities that he or she is interested in being transferred back to Ireland to serve his or her sentence. Alternatively the prisoner can express an interest in a transfer directly to the Minister for Justice and Equality (94 St. Stephen's Green, Dublin 2, Ireland). However, this second option will likely add a number of weeks to the process.

The authorities in the country in which you are imprisoned will consider your application first. They may approve it in principle, subject to a subsequent consideration of how the sentence will be enforced in Ireland.

The Department of Justice and Equality will undertake a review of your application. This review will include reports from the Gardaí, the Probation Service and the Chief State Solicitor's Office.

- The Gardaí will review the prisoner's criminal record to see if there are any outstanding warrants or charges pending in Ireland.
- The Probation Service will interview family members of the prisoner to find out if they would intend visiting the prisoner if the prisoner was returned to Ireland. The Department of Justice and Equality is unlikely to approve a request for transfer if the prisoner's family will

not be visiting the prisoner in an Irish prison or offering them support in the community after their release.

- The Chief State Solicitor's Office reviews whether the crime that the prisoner was convicted of is also a crime in Ireland.

Generally the prisoner will be expected to serve at least the minimum sentence imposed in the foreign country; receiving credit for time already served and any remission earned based on the rate prescribed in the country in which you make the application. However, the original sentence will not be increased. Once the prisoner is returned to Ireland, the Irish rate of remission will apply. The Irish rate presently stands at one quarter.

### **Processing Time:**

There is currently no set time limit for the Department of Justice and Equality to process a request for transfer. Since the application involves an exchange of documents and information between two countries, the process can take a long time. It is ICPO's experience that, on average, the process takes eighteen months.

### **UK Prisoners:**

For UK prisoners deciding whether to seek a transfer to Ireland there are a number of things which should be remembered, namely:

1. Remission rates are not as favourable to Irish prisoners as they are to their UK counterparts. This could result in you having to serve a number of additional years in prison. Under the 2007 Prison Rules, the standard rate of remission in Ireland is 25%, although there is provision in the Prison Rules for a higher rate of remission at 33% for prisoners who have 'shown further good conduct by engaging in authorised structured activity and the Minister is satisfied that, as a result, the prisoner is less likely to re-offend and will be better able to re-integrate into the community'. To date this enhanced remission rate has not been applied. In contrast, UK prisoners may be eligible for conditional release after 50% of their sentence has been served.
2. Prison conditions are not of the same standard generally within the Irish system. A number of prisons in Ireland still require prisoners to 'slop out' and while 'lifers' in the UK may expect a single cell, this would be a rarity in the Irish system.
3. Life sentenced prisoners with a tariff can apply for transfer. However, they should expect to serve at least the period of the tariff in an Irish prison.
4. IPP sentenced prisoners are not prohibited from applying but their applications are not being processed at the present time. This may be due in large part to the fact that there is no equivalent sentence in Ireland.

### **Other Considerations:**

There are some countries primarily in Africa, South America and Asia that are not signatories to the Treaty. In those cases the Department of Foreign Affairs may have to negotiate special agreements to transfer a prisoner back to Ireland.

Take care that the information you provide throughout the process is accurate. One of the most common causes of delay is inaccurate information – for example, addresses of family members in Ireland.

Overcrowding is a serious problem in Irish prisons. Some prisoners coming back from prisons elsewhere in Europe have complained about prison conditions in Ireland.

### **ICPO Monitoring of Transfer Requests:**

Upon request the ICPO will monitor transfer applications with the Department of Justice and Equality.