



## Resettlement outside England, Wales and Northern Ireland while on Licence

Many ICPO clients in England and Wales will spend time on licence following their release from custody. Some may wish to return to live in Ireland or Northern Ireland during their licence period and the ICPO Maynooth and London offices receive many queries about this.

People serving a determinate or fixed sentence of over 12 months will be released from prison on licence half way through their sentence. They are still serving their sentence but can live in the community rather than being in prison. People serving indeterminate sentences (those serving life sentences or sentenced to Imprisonment for Public Protection (IPP)) may also be released on licence. People serving a life sentence will be subject to licence conditions for the rest of their life following release from prison. People serving a sentence of IPP will be subject to licence conditions for at least 10 years. All prisoners released on licence are subject to recall to prison if they breach the conditions of their licence.

Prison Service Instruction (PSI) 08/2015 Permanent resettlement outside England and Wales of offenders subject to post release supervision came into effect on 01 February 2015 replacing PSI 20/2014.<sup>1</sup> This document states that the aims of supervision on licence are to protect the public, prevent reoffending and aid rehabilitation. It acknowledges that allowing someone to transfer to another UK jurisdiction or to permanently resettle outside the UK while on licence can assist in these aims. It give the person access to the support of their close family and alleviates the hardship faced by families who are trying to maintain contact.

### Transfer of licence from England and Wales to Ireland

If you wish to return to Ireland during your licence period you must apply to be considered for resettlement overseas. You should notify your offender manager/probation officer of your interest in this well in advance of your release date to allow adequate time for your request to be considered.

A licence imposed in England and Wales is not enforceable in Ireland or any other country outside the UK and Islands, but in some cases the Irish Probation Service may consider voluntarily supervising a person who has been allowed to resettle in Ireland during his/her licence period.

#### **Voluntary Supervision by the Irish Probation Service**

**The Irish Probation Service (IPS) does not have a statutory obligation to supervise persons returning to Ireland on licence but may do so on a case-by-case basis. It is therefore voluntary for the IPS as to whether they agree to supervise a person returning on licence. However the person returning on licence must comply with the requirements of their supervision by IPS while they are on licence and may not withdraw from the supervision.**

This offer of voluntary supervision by the Irish Probation Service is not taken into account when the UK's National Probation Service (NPS) is conducting a risk assessment to decide whether a prisoner should be allowed to resettle in Ireland; however, once an application for resettlement has been approved, the offender manager is expected to contact the Irish Probation Service to see if they can provide supervision on a voluntary basis following the move.

If you apply to resettle in Ireland while on licence your probation officer in the UK will consider the following questions:

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<sup>1</sup> Although PSI 08/2015 expired on the 01 February 2017, it remains in force until it is replaced.

1. Do you have close family or residential ties in Ireland, including, but not limited to, any compassionate reasons? If the answer is no, your application will be refused.
2. Is your index offence connected to or potentially connected to Ireland (for example, fraud involving companies set up in Ireland)? If the answer is yes, your application will be refused. If your application is still viable at this state your probation officer will consider a third question:
3. Would resettlement in Ireland undermine the protection of the public, increase the risk of reoffending and/or undermine rehabilitation? If the answer is yes, your application will be refused. People who pose a high risk of violent or sexual re-offending may not in most cases be permitted to transfer their licence in order to protect the public.

If you are under the supervision of the National Probation Service your application for resettlement in Ireland must be authorised by the Head of the NPS local delivery unit. If you are managed by a Community Resettlement Company, and that company wishes to approve your application, it must be referred to the NPS for consideration.

The Secretary of State can also grant an application allowing a prisoner to resettle in Ireland by approving a request to permanently travel under the relevant standard licence condition.

You should expect to spend some time in the UK on licence before being approved for resettlement in Ireland so that they may assess whether you are complying with requirements in the community and whether there is any risk you may reoffend. In some exceptional circumstances a prisoner may be allowed to resettle in Ireland immediately following their release from custody. This is generally limited to situations where a person has been approved for early release on compassionate grounds or where the Parole Board have approved this as part of the resettlement plan. Even if this is allowed, the prisoner is expected to report to their probation officer on a single occasion so the licence can be explained to him/her.

If your application for resettlement in Ireland is approved it is important to be aware that the licence remains in force while you are overseas. If you return to the UK or Islands prior to the expiry of the licence, you should contact the relevant probation office within two working days. If you fail to do this, proceedings may be issued for breach of licence, the licence may be revoked and you may be recalled to prison.

### **Supervision by the Irish Probation Service**

There is no formal agreement between the Probation Service in the UK and Ireland in relation to transfer of licence. Requests are dealt with on a case by case basis. Once the Irish Probation Service receives the request they may carry out a home circumstances assessment. As well as your family and living arrangements, they will also consider issues such as the offence (the type of offence may affect where you can live for example) any possibility that you may reoffend, your behaviour in prison and whether you are likely to abide by the conditions of your licence. They will expect you to spend some time in the UK on licence before agreeing to supervise you in order to be satisfied that you will not offend again or breach any of the terms of your licence.

While your licence is not enforceable in Ireland and the supervision you will receive from the Irish Probation Service is voluntary, if you fail to comply with your supervision and licence requirements, the UK Probation Service will be immediately informed and they may initiate breach/revocation proceedings in respect of your licence and a warrant may be issued.

### **Prisoners on Home Detention Curfew (HDC)**

Prisoners who are serving sentences of between three months and under four years may be eligible for Home Detention Curfew (HDC). It allows prisoners to live outside of prison providing they do not

breach the rules of their curfew and is designed to help prisoners prepare for life after their release. They must sign a licence stating the hours during which they must remain at their home address and must have an electronic tag fitted. Prisoners on Home Detention Curfew (sometimes called 'on tag') cannot apply to have this transferred to Ireland.

### **Transfer of Licence from Northern Ireland to the Republic**

Prisoners in Northern Ireland may also be released on licence in accordance with the Criminal Justice (Northern Ireland) Order 2008. Until recently prisoners wishing to transfer their licence to the Republic were often unable to do so as they were told by the Probation Board of Northern Ireland that they were required to reside in the UK for the duration of their licence and the Board had no discretion to permit prisoners on licence to reside in the Republic.

However, the Northern Ireland High Court rejected this interpretation and held that the relevant Rules should be interpreted to allow people on licence to live outside the UK under standard licence conditions.<sup>2</sup> This should be good news for prisoners in Northern Ireland wishing to transfer their licence to the South but we are aware that at least some applications are still not being processed. Please contact ICPO for further information and updates.

### **Transferring to Northern Ireland from the UK**

If you wish to return to Northern Ireland during our licence period you must apply for a transfer. Unlike resettlement overseas, when you transfer to another jurisdiction in the UK there is a presumption that you will be subject to equivalent monitoring; therefore there is no requirement that you must spend a minimum period of time on licence in England prior to the transfer. The authorities in Northern Ireland may however wish for you to spend some time on licence in England.

If you apply for a transfer to Northern Ireland while on licence your supervising officer will make an initial assessment, based on the following criteria:

1. Do you have close family or residential ties in Northern Ireland, including, but not limited to any compassionate reasons? If the answer is no, your application will be refused. If the answer is yes, your supervising officer will then consider:
2. Would the transfer undermine the protection of the public, increase the likelihood of reoffending and/or undermine rehabilitation? If the answer is yes, your application will be refused.

If you are approved for a transfer your supervising officer must decide whether it should be a *restricted transfer* or an *unrestricted transfer*

When a *restricted transfer* is made, some amendment of the licence conditions may be allowed to reflect the fact that you will be supervised in Northern Ireland, but these changes cannot be inconsistent with the fundamental aims of supervision. If the licence conditions are breached, the supervising authority in Northern Ireland can take breach action by applying the relevant legislation from England and Wales. While the power of recall remains with the NPS it can be executed in Northern Ireland.

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<sup>2</sup> In the Matter of an Application by Gerard McManus for Judicial Review and In the Matter of Decisions of the Probation Board for Northern Ireland and the Department of Justice, No. [2017] NIQB 10, 21 January 2017, [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2017/\[2017\]%20NIQB%2010/COL10162Final%20-%20Approved.pdf](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2017/[2017]%20NIQB%2010/COL10162Final%20-%20Approved.pdf)

When an *unrestricted transfer* is made, the probation provider in England and Wales has no further responsibility for supervision. This becomes a matter for the authorities in Northern Ireland as if you had been sentenced and released from prison there. Any actions for breach of the licence imposed in Northern Ireland must be taken by the authorities there and, if necessary, a person will be recalled to prison in Northern Ireland.

You will not be eligible for an unrestricted transfer if: (1) you have a type of sentence that does not exist in Northern Ireland or (2) there would be a substantial increase or decrease in the period or amount of supervision in Northern Ireland compared to what you could expect in England and Wales.

The Secretary of State can grant applications for transfer to Northern Ireland. If your case is managed by a Community Rehabilitation Company, the supervising officer must consider the application initially and make contact with the authorities in Northern Ireland if appropriate. If they then wish to proceed with the transfer they must pass it to the Head of the NPS local delivery unit for review on behalf of the Secretary of State.

If you are under the supervision of the NPS, following the initial discussion with the authorities in Northern Ireland, your application for a transfer must be sent to the Head of the MPS local delivery unit, who will make a decision on behalf of the Secretary of State.

In the case of all indeterminate sentences, the application must be endorsed by the Head of the NPS local delivery unit and then sent to the Public Protection Casework Section (PPCS) for a final decision.

### **Conclusion**

This factsheet provides a brief overview of the procedures for resettling in Ireland and transferring to Northern Ireland while on licence, as set out in PSI 08/2015. These are not straightforward processes and applications are dealt with on a case-by-case basis. If you wish to resettle in Ireland or transfer to Northern Ireland during your licence period please contact the ICPO for further information and advice on this issue.

### **ICPO November 2017**

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