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## Transfer of Sentenced Persons (repatriation)

### UPDATE - September 2018

#### Summary

- As of May 2018 applications for repatriation from countries other than the UK are now being processed again.
- Repatriation applications remain 'on hold' for prisoners in the UK, pending legislative change.
- Legislation to deal with the challenge of adapting UK sentences to equivalent Irish sentences is due to come before the Oireachtas (parliament) in the Autumn.
- A recent ruling by the Court of Appeal found the Minister for Justice was entitled to exercise discretion in relation to applications for repatriation and that the decision to refuse an IPP prisoner's application on the basis that the sentence was unknown to Ireland law was justified.

#### Background

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 relative often, if 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 came into force in 1985 and allows prisoners to be transferred to serve their sentence in their own country. Ireland ratified the Convention on passing the Transfer of Sentenced Persons Act 1995. Other countries that have ratified the Convention include all EU Member States, the United States, Australia, Japan and Turkey.

In order for a transfer to take place, the prisoner, the sentencing country and the prisoner's home country must all agree to the transfer. The prisoner's consent must be given freely and in writing. However there is no right to transfer and the sentencing state or the prisoner's home country may refuse the application. Since the Transfer of Sentenced Persons Act was passed, 154 prisoners have been transferred to serve their sentence in Ireland. This is less than a third of all applications and the rate of inward transfers declined significantly between 2011 and 2016.

#### Legal developments

The processing of applications was put 'on hold' prior to the Supreme Court decision in O'Farrell v Governor of Portlaoise Prison in July 2016 and has remained on hold since, while the Government considered the implications of its unsuccessful appeal.

In O'Farrell, the Supreme Court held that the warrants used to detain the prisoners were defective and these defects could not be remedied nor the warrants adapted after the prisoners had been transferred, on the basis that the adaptations sought went to the nature and duration of the sentences and were not merely procedural in nature.

In 2014, the Supreme Court also found against the State in relation to its application of determinate sentences received by Irish citizens in the UK who were transferred to Ireland. Essentially the Court found determinate sentences to be made up of two equal parts – a period of imprisonment followed by a period of time in the community on licence. Prisoners transferred back to an Irish prison were spending considerably longer in prison than they would have had they remained in the UK, as licence is not a feature of Irish sentencing and the remission rate is ordinarily one quarter of any sentence handed down.

### **Current situation**

Since 2016 all applications for transfer to Ireland, irrespective of the country where the person is imprisoned, were on hold until legislation was amended to deal with the legal difficulties arising from Supreme Court decisions in 2014 and 2016. Not all foreign sentencing regimes present the same legal difficulties as sentences handed down in the UK and the ICPO had raised this with the Department of Justice. As of May 2018 applications from countries other than the UK are now being processed again. This is a very welcome development for those people around the world who are being detained hundreds or thousands of miles away from loved ones in Ireland. All of these applications are now with the Chief State Solicitors Office. It is not yet clear how long existing applications will take to be processed but the ICPO will continue to seek their speedy progression through the system.

Unfortunately repatriation applications remain ‘on hold’ for prisoners in the UK. Legislation is required to deal with the challenge of adapting UK sentences to equivalent Irish sentences. The ICPO has been informed that this legislation will come before the Houses of the Oireachtas (parliament) in the Autumn. This is certainly good news but it’s important to remember that passing legislation can be a lengthy process. The ICPO will be working with members of the Oireachtas to ensure the legislation addresses the current difficulties and to ensure the legislation is enacted as quickly as possible so that applications can begin to be processed once again.

### **Imprisonment for Public Protection (IPP)**

Up to recently the transfer of IPP prisoners was subject to a legal challenge and the Department of Justice stated that it would not be processing any applications from IPP prisoners until this case was heard. The case, which first came before the courts in 2016, sought to overturn the Minister for Justice’s decision to refuse an IPP prisoner a transfer to an Irish prison. The Court found in favour of the Minister and an appeal was lodged, however in April 2018 the appeal was dismissed. While this case does not categorically rule out the possibility of other IPP prisoners seeking a prison transfer to Ireland, it does vindicate the Minister’s decision to refuse to accept applications for repatriation from IPP prisoners on the basis that no comparable sentence exists in Irish legislation. It seems likely that this case will be relied on for future decisions involving IPP prisoners seeking prison transfers to Ireland. The ICPO is committed to supporting IPP prisoners through their sentence; advocating on their behalf wherever possible to assist in their progress and in satisfying the requirements of the Parole Board. If you require support please contact your ICPO caseworker to discuss your situation.

### **What you can do**

- If you have submitted an application for repatriation and you would like ICPO to monitor its progress please let your caseworker know.
- Continue to contact your local TDs. They are responsible for amending and passing legislation so it’s important they understand the urgent need to amend and introduce new legislation to ensure prison transfers function effectively.