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## Transfer of Sentenced Persons (repatriation) - November 2018

All existing applications for repatriation have now been ‘reactivated’ according to the Minister for Justice and Equality Charlie Flanagan (Dáil Question, 17<sup>th</sup> October 2018). ICPO sought clarity on what ‘reactivated’ means in practice, as the legislative change required to progress certain applications is still outstanding. In short, it means different things for different prisoners – depending on the prisoner’s location and sentence type. Please be aware that if reports from An Garda Síochána and the Probation Service were already undertaken prior to the prisoner’s application being placed on hold in 2016 these reports may now be considered out of date and new reports from these authorities will be required.

**All countries except the UK:** Applications from prisoners in countries other than the UK are being processed again and are moving through the stages of the application process. All have been sent to the Chief State Solicitors Office (CSSO), An Garda Síochána and the Probation Service for relevant reports. Collating these reports can be time consuming; we have been advised that as a guide you could expect this stage of the process to take 4-6 months. Further clarification from the sentencing state may then be needed, at which point the Irish Prison Service (IPS) will contact the relevant authorities. IPS has committed to informing ICPO if further clarification is required on an application so that we in turn can update you.

**Determinate sentence prisoners UK:** Applications from prisoners with determinate sentences in the UK are once again being processed by the Irish Prison Service. However until the Transfer of Sentenced Persons Act is amended to address the differences between the UK and Irish sentencing regimes, applications will be refused. Family members will likely be contacted by the Irish Probation Service in order to undertake a Home Circumstances report, which may raise expectations about the progress of a prisoner’s application. It is important to be aware that until the legislation is amended, determinate sentence prisoners’ applications will not be successful.

**Life sentence prisoners UK:** Applications from prisoners serving a life sentence in the UK are being processed again. A change to the legislation is not required in order to process life sentence applications as there is an equivalent sentence in Ireland, so the legal difficulties concerning comparability of sentences do not arise.

**IPP sentence prisoners UK:** Applications from prisoners serving an IPP sentence in the UK are not being accepted, on the basis that no comparable sentence exists in Irish legislation. A decision of the High Court in 2016, affirmed by the Court of Appeal in 2018, found in favour of the Minister and their discretion to refuse an IPP prisoner’s application. The judgement is likely to be relied on for future decisions involving IPP prisoners seeking repatriation to Ireland.

**New applications in the UK:** We are aware that many UK prisons are not accepting new applications for repatriation to Ireland on the basis that they are unable to progress through the Irish system. This is no longer the case, as outlined above, and is a matter for the Irish Prison Service and HM Prisons and Probation to resolve. Please contact the ICPO if your application is not being accepted. Please note that if you are serving a determinate sentence and the legislation has not been passed by the time your application goes to the Minister, your application will be refused.