



Transfer of Sentence (repatriation)

Summary

- Irish people in prison overseas may apply to transfer to an Irish prison to serve the remainder of their sentence, providing the country they are sentenced in is a signatory to the Convention on the Transfer of Sentenced Prisoners (68 countries have signed up to this Convention – the full list is provided at the end of this document)
- There are four conditions that a prisoner must meet in order to be eligible to apply for a transfer:
 - 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.
 - The sentence is final. A prisoner cannot apply for transfer before they face trial or until after all appeals have been heard, if they choose to pursue one.
 - There must be at least six months left to serve on the sentence.
 - The crime that the prisoner is convicted of must also be a crime in his or her home country.
- To apply for a transfer, the prisoner first applies to the prison authorities in the country they are serving their sentence in. The application is considered by the sentencing state and if approved, it is sent to the Irish authorities for consideration. The Irish Prison Service (IPS) manage this process and gather documentation and reports from other state agencies to inform their decision. The Minister for Justice makes the final decision on whether to accept an individual's application.
- All transfers into Ireland were put on hold in 2016 as a result of a number of Supreme Court decisions in 2016 and 2014. All applications were reopened in May 2018 and as of July 2019, there were 30 applications being dealt with by IPS.
- Although some applications have reached their conclusion, the rate of progress remains unsatisfactory with only 4 applications being approved or rejected since 2018.

IPPs & Determinate Sentenced Prisoners - UK

As a result of the cases taken before the Supreme Court in 2014 and 2016, a decision was taken by Government to amend the existing legislation (the Transfer of Sentenced Persons Act 1995, 1997) to address the incompatibility between determinate sentences in England & Wales and Irish sentences. Legislation has been drafted however it has not yet been introduced into the Houses of the Oireachtas (Parliament). The ICPO does not anticipate any determinate sentenced prisoners being accepted back to Ireland from the UK before this legislation has been amended.

Applications from prisoners serving an IPP sentence in the UK are not being accepted, as a result of a decision of the High Court in 2016, affirmed by the Court of Appeal in 2018, which found in favour of the Minister's discretion to refuse an IPP's application. This judgement is likely to be relied on for future decisions involving IPP prisoners seeking repatriation to Ireland.

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1. Overview

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.

Transfer of Sentence (or repatriation) is the process by which a person serving a prison sentence in a foreign country may seek to transfer their sentence to their home country. Transfers are possible as a result of the Council of Europe Convention on the Transfer of Sentenced Persons, which was introduced in 1983. It emphasises the benefits for prisoners' rehabilitation and reintegration by transferring to their own country. Ireland is one of 68 signatories to this Convention.¹ The Transfer of Sentenced Persons Acts, 1995 and 1997, provide the statutory framework for transfers into and out of Ireland. Applications are processed by the Irish Prison Service under the Minister for Justice.

2. Conditions for applying for a transfer

In order to apply to transfer your sentence both countries must be signatories to the Convention. 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.

The four conditions that a prisoner must meet in order to be eligible to apply for a transfer are set out in the Summary on Page 1. Although it is not part of the criteria in the Convention or the Act, the Irish Prison Service places an emphasis on having active family connections in Ireland in their consideration of applications for transfer into the state. There may also be additional criteria depending on your country of imprisonment.

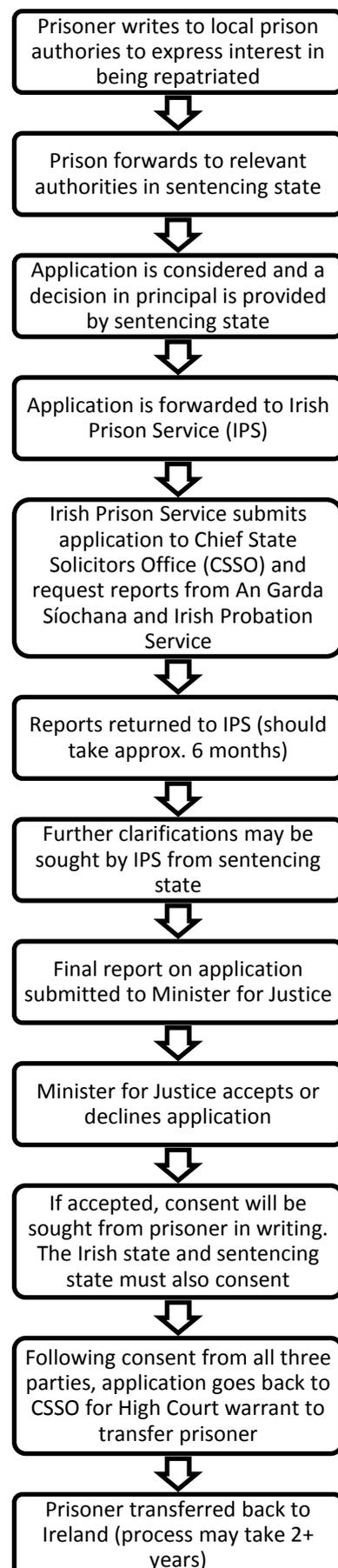
3. Application Process

The prisoner applies to the prison authorities in the sentencing state to have his/her sentence transferred to their home country. The application is considered by the sentencing state and if approved, it is sent to the Irish authorities for consideration. The Irish Prison Service manage this process and gather documentation and reports from other state agencies to inform their decision. The Minister for Justice makes the final decision on whether to accept an individual's application.

In order for a transfer to take place there has to be three-way consent. The prisoner, the sentencing state and the prisoner's home country all have to agree to the transfer. The prisoner's consent must be given willingly and in writing.

In addition to transfers under the Convention on the Transfer of Sentenced Persons, prisoners within the EU are eligible for repatriation under Framework Decision 2008/909/JHA. This allows for more transfers to take place between EU member states on a much shorter timeframe but does not require consent, so a prisoner could be transferred against their wishes. Ireland is one of two countries which have not yet signed up to this Framework Decision, which means Irish prisoners are not eligible to return to Ireland under this Framework.

The number of prisoners transferred into Ireland over the past number of years has been declining and for approximately 2 years, between mid-2016 and 2018, no transfers were successfully completed into the state.



The table below shows the numbers of people who have been transferred into the State since Ireland signed up to the Convention.

Table C - Inward Transfers Completed

	<i>1996 - 2000</i>	<i>2001 - 2005</i>	<i>2006 - 2010</i>	<i>2011 - 2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</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
<i>Total</i>	80	32	29	12	1	0	0	154

Source: Annual Report 2018 on the Transfer of Sentenced Persons Acts 1995 and 1997²

4. Conditions in Irish prisons

When considering whether to apply to transfer your sentence, there will be a number of factors that will inform your decision and the conditions in Irish prisons may be one of those. The following information is provided in order to give you an indication of the conditions in Irish prisons. Depending on the country you are detained in, the conditions in Irish prisons may be an improvement or they may be worse.

There are 12 prisons in Ireland: one high security (Portlaoise Prison), nine medium security (Mountjoy Prison; Dochas Centre - Mountjoy Female Prison; Arbour Hill Prison; Castlerea Prison; Cork Prison; Limerick Prison, Midlands Prison, Wheatfield Place of Detention, Cloverhill (Remand) Prison), and two low security, open prisons (Loughan House and Shelton Abbey). The majority of female prisoners are accommodated in the Dóchas Centre in Dublin with the remainder accommodated in Limerick Prison.

Following approximately a decade of a declining prison population, the number of people in prison in Ireland has been rising again over the past two years. The increasing numbers are putting significant pressure on the system and women's prisons in particular are suffering from overcrowding. In May 2019 there were 1,364 instances of people sleeping on the floor across the prison estate.³

Half of the prison population have their own cell; almost 40% are in double cells and the remaining 10% are accommodated in triple cells and cells for 4+ people. In recent years the prison estate has been modernised and the practice of 'slopping out' is no longer common, although 1-2% of prisoners are still without in-cell sanitation.⁴

Prisoners can expect to be provided with medical, dental, psychiatric and psychological care while in the care of the Irish Prison Service. Prisoners with mental health issues can receive treatment in prisons or they may be transferred to the Central Mental Hospital (CMH). As this facility is operating at capacity prisoners who require in-patient psychiatric treatment can face considerable delays in being transferred to the CMH.

Training and education is available in prisons but access can be affected by staff shortages. There are 126 workshops across the prison estate. In excess of 900 prisoners (20-25% of the prison population) participate in work training activities daily.

Approximately 14% of the prison population are on a restricted regime, meaning their out of cell time is limited and they will spend between 19-23 hours in their cell per day. The vast majority of those on a restricted regime are doing so on a voluntary basis on grounds of protection.⁵

Sentenced prisoners, over 18 years of age, are entitled to at least one phone call a week and a minimum of one 30 minute visit per week but the Prison Governor can decide to allow more visits.

There are schemes available to support prisoners to plan for their release and resettlement and prison-based Probation Officers work with multi-disciplinary teams to provide support to prisoners.

5. Q&A

How long will I serve in Ireland?

Ireland operates a policy of continued enforcement in relation to prisoners transferring into the State, meaning that the sentence imposed in the country you were convicted in continues to be enforced in Ireland rather than being converted into an equivalent sanction handed down by an Irish court. Your sentence should not be harsher than the sentence imposed in the country of conviction and it should not exceed the maximum sentence prescribed by law in Ireland.

Once transferred to Ireland you will be eligible for the Irish rates of remission (time off your sentence for good behaviour). Prisoners in Ireland can earn a quarter (25%) off their sentence for good behaviour. It is possible to earn enhanced remission of up to one third off your sentence if you engage in structured prison activities, however this is generally granted in exceptional circumstances at the discretion of the Minister for Justice and Equality.

Prisoners serving a life sentence are not eligible for remission.

Will I have a criminal conviction?

If you are successful in your application to transfer your sentence to Ireland, your record in the Garda Criminal Records Office will show that you have served time in an Irish prison.

You may be asked whether you have a conviction when applying for job, housing, and insurance. It is strongly advised that if asked, you should declare your conviction(s), as failing to do so can have serious repercussions. If you have been convicted of a sexual offence or an offence relating to drug trafficking you are required to notify Gardaí of certain information about yourself.

Can I reapply if previously refused?

You can reapply even if you had a previous application refused by the Irish Prison Service but your success will depend on the reason provided for refusal in your previous application. If, for instance, you did not have support from family members in Ireland when you previously applied but you have now rebuilt relationships then it may be possible that your application will succeed. If however your application was refused because you did not satisfy residency conditions, then any subsequent application may fail unless you can provide additional documentation to address this concern.

What if the country I am detained in is not part of the Convention?

If the country you are detained in is not a signatory to the Convention (see footnote 1 for a full list) then the only other possibility is for a bilateral transfer agreement to be negotiated between Ireland and your country of detention. Ireland does not currently have any bilateral agreements with other countries but Section 2 of the Transfer of Sentenced Persons Acts, 1995 and 1997, provides a legislative basis for bilateral agreements with countries that are not signatories of the Convention.

What will it cost?

Prisoners transferring to an Irish prison do not currently incur a cost for their transfer to Ireland however this practice may be subject to change.

What happens if I have a fine?

How your fine is dealt with depends on the jurisdiction you are detained in. If the country you are detained in approve your application to transfer, the Irish Prison Service will seek legal advice about this aspect of your application.

Why are other EU prisoners getting transferred so quickly?

Ireland is one of two EU countries that has not yet brought into force Framework Decision 2008/909/JHA, which provides for the transfer of prisoner between EU member states. As a result Irish prisoners in EU countries cannot avail of the more rapid transfer process that other EU prisoners can. Legislation to bring this Framework Decision into force has been drafted since 2013 however it remains at an early stage.

6. Update on legislation

As of 2nd July 2019, 30 applications were being processed by the Irish Prison Service. Legal advice has been provided on 17 of these cases and is being considered in the remaining 13 cases. Progress on applications is slow however it is positive that applications are moving forward. Since the start of 2018 decisions have been made on 4 applications, of which 1 was successful.

All applications to transfer into the Irish state were put on hold between 2016 and 2018 due to Supreme Court decisions in 2014 & 2016 which found that the legislation governing the transfer of sentenced persons was insufficient. Government decided to amend the legislation and an outline of a Bill (known as the General Scheme or 'Heads' of a Bill) was approved by Government in February 2019. A full Bill is now being drafted by the Office of Parliamentary Counsel. ICPO has been informed that it is the Minister's intention to bring the legislation before the Houses of the Oireachtas during the 2019 Autumn session (Sept-Dec). However it is not on the Priority List for legislation to be passed this session and is one of 29 pieces of legislation that the Department of Justice and Equality is seeking to introduce.

This legislation affects determinate sentenced prisoners on the UK only.

The ICPO understands that until the Transfer of Sentenced Persons Act is amended to address the differences between the UK and Irish sentencing regimes, applications from prisoners with determinate sentences in the UK will be refused. These applications will go through the various stages of data collection, including family members being contacted by the Probation Service in order to undertake a Home Circumstances Report. This may raise expectations about the progress of a prisoner's application but it is important to be aware that until the legislation is amended, it is not possible for applications from determinate sentenced prisoners to be successful.

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 in the case of McKeon v Minister for Justice, affirmed by the Court of Appeal in 2018, found in favour of the Minister's discretion to refuse an IPP's application and is likely to be relied on for future decisions involving IPP prisoners seeking repatriation to Ireland.

ICPO October 2019

This factsheet is for information purposes only and does not and is not intended to constitute legal advice. While every effort has been made to ensure that the content is accurate and up to date, the ICPO accepts no responsibility for errors and omissions.

¹ The signatories to the Convention are Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belgium, Bosnia and Herzegovina, Bolivia, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Holy See, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Republic of Moldova, Monaco, Mongolia, Montenegro, Netherlands, North Macedonia, Norway, Panama, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Republic of Korea, Tonga, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America, Venezuela.

² Department of Justice *Annual Report 2018 on the Transfer of Sentenced Persons Acts 1995 and 1997* http://www.justice.ie/en/JELR/Pages/Transfer_of_Sentenced_Persons_Annual_Report_2018

³ Irish Prison Reform Trust 'IPRT responds to annual report from Irish Prison Service' Press Release 24th June 2019 <http://www.iprt.ie/contents/3461>

⁴ Irish Prison Service *Census Prison Population April 2019 – Cell occupancy – In-Cell Sanitation* https://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2019-In-Cell.pdf

⁵ Irish Prison Service *Census of Restricted Regime Prisoners April 2019* https://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2019-Restriction.pdf