

REPORT

by

THE MINISTER FOR JUSTICE AND EQUALITY,

Charles Flanagan

to

the Houses of the Oireachtas

on the Operation of

THE TRANSFER OF SENTENCED PERSONS ACTS,

1995 and 1997

for the period

1 January, 2018 - 31 December, 2018

(In accordance with Section 11 of the Act)

INTRODUCTION

Foreword

1.0 The Council of Europe Convention on the Transfer of Sentenced Persons was ratified by Ireland following the passing of the Transfer of Sentenced Persons Act, 1995 and came into effect on 1 November, 1995. The Act provides the legislative basis for the operation of the Convention between Ireland and other parties to the Convention.

The Transfer of Sentenced Persons (Amendment) Act, 1997 provided for the transfer into and out of the State of persons who have been sentenced to periods of imprisonment greater than the maximum penalties allowed under Irish law for similar offences.

This is the twenty-fourth Annual Report, presented in accordance with Section 11 of the 1995 Act, outlining details of matters relating to the operation of the Acts in 2018.

The Operations Directorate of the Irish Prison Service administer the Transfer of Sentenced Persons function on behalf of my Department.

Purpose of the Convention/Legislation

1.1 The Transfer of Sentenced Persons Acts, 1995 and 1997 provide a mechanism whereby non-nationals serving sentences in Ireland may apply to serve the remainder of their sentences in their own countries, where those countries are party to the Council of Europe Convention on the Transfer of Sentenced Persons. Similarly, Irish persons who are imprisoned overseas in such countries may apply to serve the remainder of their sentences in Ireland.

The Convention is open to States outside Europe and the Government supports the Council of Europe policy of encouraging states to ratify and operate the Convention. There are over sixty states operating the Convention at present.

The policy of the Convention, which is based on humanitarian considerations, is to overcome the difficulties posed for prisoners serving sentences in foreign jurisdictions, such as absence of contact with relatives and differences in languages and culture. In this regard, it has been long established Government policy that, whenever possible, prisoners should be permitted to serve their sentences close to their families.

The Convention provides a procedural framework for such transfers and seeks to provide a simple and relatively expeditious mechanism whereby the repatriation of sentenced persons may take place. The Convention sets out six conditions which must be fulfilled if a transfer is to be affected and these conditions are also set out in the Transfer of Sentenced Persons Acts, 1995 and 1997. It should be noted, however, that, even where all of the conditions are satisfied, there is no obligation on a State to comply with a transfer request. While the Convention does not require that the requested state give reasons for a refusal to agree to a transfer, the Irish legislation provides that, where practicable and where the interests of justice do not so preclude, a statement specifying the grounds for the refusal will be provided to the applicant or requesting state as appropriate.

The conditions which must be met are that:

- 1) The offender seeking a transfer is regarded as a national of the State to which the transfer is sought (the administering State),
- 2) The order or judgement under which the sentenced person was sentenced is final,
- 3) There is, at the time of the receipt of the request for transfer, at least six months of the sentence remaining to be served,
- 4) The sentenced person consents to the transfer,
- 5) The act or omission constituting the offence would also constitute an offence in the administering State, and
- 6) Both States consent to the transfer.

Under the terms of the Convention, the two States involved in processing a transfer request are required to exchange information about the sentenced person in order to ensure that the conditions above are met. This information includes a copy of the court judgement and a copy of the law on which it is based, sentence administration particulars and medical/social reports. Reports from An Garda Síochána and police forces in the other State are also sought to determine the circumstances of the offence and to ensure that there are no other charges outstanding against the person. In cases where the prisoner has already served a very long period, it can be a time consuming to trace all the necessary information. This process is necessary, however, to ensure that all parties (the offender, the sentencing State and the administering State) are fully aware of the legal consequences of a transfer and that an informed decision can be made by all concerned. The offender must be informed in writing in his or her own language of the legal consequences of the transfer.

Due to the complexity of the documentation required to affect a transfer between other States and Ireland, the process of information exchange can be time consuming.

Where a sentenced person is seeking to transfer into this country, legal confirmation is obtained from the State's legal officers that the offence for which the sentence is being served would also constitute an offence under Irish law. When all parties have consented to a transfer, an application is made to the High Court for the necessary warrant authorising the person's transfer from the sentencing State and his or her subsequent imprisonment here. Every effort is made to process each application as speedily as possible, once the three-way consent between the two States and the sentenced person is forthcoming.

Progress in 2018

1.2.1 During the period covered by this report there were no inward transfers to the state and four prisoners transferred out of the State. In total, one hundred and fifty four prisoners have now transferred here from abroad and one hundred and eighty nine prisoners have transferred out since the Act came into operation on 1 November, 1995. My Department continues to cooperate with the Irish Commission for Prisoners Overseas (ICPO) in providing information on applications.

APPLICATIONS FOR TRANSFER INTO IRELAND

Work Processed in 2018

2.0 Table "A" details the work processed in 2018 in respect of applications received for transfer into this jurisdiction. In addition to the applications received in 2018 (Ten) it also includes twenty eight applications which were under consideration from the previous years.

Table A - Inward Transfers - Work Processed in 2018

Number of Applications Received in 2018	10
Number of Applications from previous years active at start of 2018	28
Number Transferred in 2018	0
Number Refused in 2018	2
Number Withdrawn in 2018	1
Number Deemed Closed in 2018	0
Number released in 2018	7
Number of applications active at end of 2018 (see Table D)	28

Ten applications for transfer into this jurisdiction were received in 2018. Of these applications, one was from Northern Ireland, one was from Australia, one was from the Czech Republic, one was from Spain and six were from the UK.

Comparisons to previous years

2.1 A total of five hundred and forty six applications have been received for transfer into this jurisdiction since the Act came into operation in November, 1995. Table "B" shows a breakdown of these applications by jurisdiction and by year of application.

Table B - Inward Transfers, Applications Received

	<i>1995</i> - <i>2000</i>	<i>2001</i> - <i>2005</i>	<i>2006</i> - <i>2010</i>	<i>2011</i> - <i>2015</i>	<i>2016</i> - <i>2017</i>	<i>2018</i>	<i>Total</i>
UK	178	88	104	64	5	6	445
USA	4	2	2	1	-	-	9
Canada	1	-	2	-	-	-	3
Czech Republic	-	-	-	-	-	1	1
Hungary	-	-	-	1	-	-	1
Hong Kong	1	-	-	-	-	-	1
Greece	1	-	-	-	-	-	1
Isle of Man	2	1	-	-	-	-	3
Scotland	-	-	-	1	2	-	3
Estonia	-	-	-	1	-	-	1
Latvia	-	-	-	1	-	-	1
Lithuania	-	-	-	2	-	-	2
Spain	4	2	4	7	2	1	20
Sweden	-	-	-	2	-	-	2
Italy	-	1	2	-	-	-	3
Panama	-	2	-	-	-	-	2
Netherlands	-	1	-	1	-	-	2
Japan	-	1	2	1	-	-	4
Australia	-	1	3	2	2	1	9
Trinidad & Tobago	-	1		-	-	-	1
Germany	-	-	2	1	1	-	4
N. Ireland	-	-	2	10	4	1	17
Switzerland	-	-	1	-	-	-	1
Ecuador	-	-	1	-	-	-	1
Costa Rico	-	-	-	1	-	-	1
Belgium	-	-	1	3	3	-	7
France	-	-	-	-	1	-	1
<i>Total</i>	191	100	126	99	20	10	546

Inward Transfers Completed

2.2 A total of one hundred and fifty four prisoners have now transferred into this jurisdiction since the Act came into operation in November, 1995. Table "C" shows a breakdown of the number of prisoners transferred up to the end of 2018 by jurisdiction and by year of transfer.

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

Applications for inward transfer under consideration at end of 2018

2.3 At the end of 2018, there were twenty eight inward applications under active consideration. The status of these particular applications, which were at various stages of consideration (some more advanced than others), is listed in Table "D".

Table D - Inward Transfers, Active Applications at end of 2018

	<i>Applied 2010 & 2011</i>	<i>Applied 2012 & 2013</i>	<i>Applied 2014 & 2015</i>	<i>Applied 2016 & 2017</i>	<i>Applied 2018</i>	<i>Total</i>
Awaiting advice from CSSO and other reports	-	2	5	6	9	22
Awaiting further papers from sentencing state	-	1	1	3	-	5
Awaiting further information from prisoner	1	-	-	-	-	1
Awaiting consent of prisoner and sentencing state	-	-	-	-	-	-
Awaiting Probation Report	-	-	-	-	-	-
Approved and pending transfer	-	-	-	-	-	-
Awaiting Attorney General's advice	-	-	-	-	-	-
Total	<i>1</i>	<i>3</i>	<i>6</i>	<i>9</i>	<i>9</i>	<i>28</i>

APPLICATIONS FOR TRANSFER OUT OF IRELAND

Work Processed in 2018

3.0 Table "E" details the work processed in 2018 in respect of applications received for transfer out of this jurisdiction. In addition to the applications received in 2018 (6) it also includes applications (seventeen) which were active from previous years.

Table E - Outward Transfers, Work Processed in 2018

Number of Applications received in 2018	6
Number of Applications from previous years, active at start of 2018	17
Number of applications refused in 2018	5
Number Transferred in 2018	4
Number Withdrawn / Deemed Closed in 2018	7
Number released in 2018	2
Number of Applications active at end of 2018 (See Table H)	5

Six new applications were received for transfer out of this jurisdiction in 2018, four were from Northern Ireland, and two were from the United Kingdom.

Five applications in total were refused in 2018. Applications are principally refused owing to the substantial reductions in sentence, due to divergent rates of remission, which the applicants would have attracted in the event of a transfer or if there is good reason to believe that the applicant would not ordinarily be resident in the jurisdiction he or she is applying to be transferred to.

Four applications were withdrawn during the processing of their applications in 2018.

Comparisons to previous years

3.1 At year's end, a total of five hundred and five applications had been received for transfer out of this jurisdiction since the Act came into operation in November, 1995. Table "F" shows a breakdown of these applications by jurisdiction and by year of application.

Table F - Outward Transfers, Applications Received.

	<i>1996 -2001</i>	<i>2002 -2006</i>	<i>2007 - 2011</i>	<i>2012 -2015</i>	<i>2016-2017</i>	<i>2018</i>	<i>Total</i>
UK	67	54	82	42	11	2	258
NI	47	11	23	18	7	4	110
France	1	-	-				1
Germany	4	-	2	1			7
Netherlands	4	8	21	5			38
Sweden	1	-	-	1	1		3
Scotland	4	4	5	1	1		15
Canada	1	-	-				1
Belgium	1	-	1	1	1		4
Italy	1	2	-				3
Spain	2	-	3	1			6
Portugal	-	1	3	1	1		6
Albania	-	2	1	1			4
USA	-	1	-				1
Lithuania	-	-	7	2			9
Latvia	-	-	4	1			5
Poland	-	-	8	3	2		13
Czech Republic	-	-	2	1			3
Moldova	-	-	1		1		2
Bulgaria	-	-	1				1
Switzerland	-	-	1				1
Romania	-	-	2	4	3		9
Finland	-	-	-	1			1
Australia	-	-	1	1			2
Hungary					1		1
Norway					1		1
<i>Total</i>	133	83	168	85	30	6	505

Outward Transfers Completed

3.2 A total of one hundred and eighty nine prisoners have now transferred out of this jurisdiction since the Act came into operation in November, 1995. Table "G" shows a breakdown of the number of prisoners transferred to date by jurisdiction and by year of transfer.

Table G - Outward Transfers Completed.

	<i>1996 - 2000</i>	<i>2001 -2005</i>	<i>2006 -2010</i>	<i>2011 - 2015</i>	<i>2016 -2017</i>	<i>2018</i>	<i>Total</i>
UK	15	23	42	21	6	3	110
N. Ireland	20	1	6	10	2	-	39
Holland	-	-	-	-	-	1	1
Sweden	1	-	-	-	1	-	2
Netherlands	1	-	16	5	2	-	24
Germany	-	1	-	-	-	-	1
Scotland	-	1	1	-	-	-	2
USA	-	-	1	-	-	-	1
Poland	-	-	1	-	-	-	1
Spain	-	-	1	-	-	-	1
Lithuania	-	-	-	1	2	-	3
Bulgaria	-	-	-	1	-	-	1
Czech Republic	-	-	-	1	-	-	1
Albania	-	-	-	-	1	-	1
Romania	-	-	-	-	1	-	1
<i>Total</i>	37	26	68	39	15	4	189

Applications for outward transfer under consideration at end of 2018

3.3 At the end of 2018, there were 5 applications under active consideration. These applications are listed in Table "H". These applications were at various stages of preparation for transmission to the potential receiving states. A number of reports must be collated for transmission with the formal application, to the foreign jurisdictions concerned. One was under preliminary examination by the Irish Prison Service, three were awaiting the decision of the receiving state, and one was awaiting Ministerial decision.

Table H - Outward Transfers, Active Applications at end of 2018

	<i>Total</i>
Preliminary examination by Department	1
Awaiting consent of Prisoner	0
Awaiting decision of receiving State	3
Awaiting Advice from Attorney General's Office	0
Approved and pending transfer	0
Awaiting Ministerial Decision	1
<i>Total</i>	5

CONCLUSION

4.0 As was the case in previous years, applications for both inward and outward transfers were received from persons serving both determinate and indeterminate sentences. The nature of the offences differed from case to case as did the length of sentences being served. The offences ranged from possession of controlled substances to assault and murder. The imposed sentences ranged from two years to life imprisonment. The security classification of the applicants differed according to the severity of the offence and the length of sentence remaining. Each application was considered on its own merits and in accordance with the procedures and requirements of the Convention.

The time-scale for completing an application continues to vary significantly from one case to another as a result of the extensive documentation which must be exchanged between both jurisdictions in order to allow an application to be fully considered. My Department continues to make every effort to ensure that each application is processed as promptly as possible and I am confident this will continue in 2019.

There were several enquiries to my Department during the year from Irish persons imprisoned abroad, or from the families of such persons, as to the possibility of transfer here. Where the country in which they were detained also operated prisoner transfers under the Convention, my Department routinely wrote to the appropriate authorities in those jurisdictions to request that the application for transfer be processed. The prisoner or the family concerned were also written to and advised as to the appropriate steps involved in making an application. Wherever possible, the persons concerned were kept informed of progress with the transfer application.

There have been a number of Court judgements in 2014 & 2016 which have implications for transferring prisoners from other States to Ireland. These judgements raised a number of complex issues about the legislation and its administration, indicating that legislative change is required.

A further judgement in 2018 of the Court of Appeal has a bearing on those applications that were on hold as a result of the complex issues raised by the Supreme Court decision in 2016. The outcome is that the statutory scheme provided for in the Transfer of Sentenced Persons

Acts is to be implemented, and each transfer application must be considered on its own merits under existing legislation. All relevant applicants have been informed of this and will be further informed of any developments in their respective cases as they arise.

A General Scheme of a Bill to respond to the judgements has been drafted. The General Scheme was approved by Government and has been forwarded to the Office of Parliamentary Counsel for drafting.

I would like to acknowledge the co-operation of the authorities in those jurisdictions with whom we have had contact in connection with these transfers, particularly the authorities in the United Kingdom with whom we have completed the majority of our prisoner transfers. I must also acknowledge the co-operation of the Garda Commissioner, the Chief State Solicitor and the Attorney General and their staff without whose knowledge and professionalism the successful transfer of sentenced persons into and out of Ireland could not be completed. I would also like to thank the Irish Prison Service and the Probation Service for their important contributions to the process.

Finally, I wish to assure the members of the Oireachtas that my Department's established policy in this area will continue. As Minister, I will continue to consider applications from prisoners both here and abroad to transfer to their home jurisdiction in order to complete their sentences close to their families and friends. In line with the spirit of the Convention, I believe this will assist their social rehabilitation and reintegration into their communities, which can only help everyone concerned. I am confident therefore that we will see future progress being made in this significant area in the coming years.

CHARLES FLANAGAN
MINISTER FOR JUSTICE AND EQUALITY

2 July 2019