



## 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 where they are serving their sentence. 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 2014 and 2016. All applications were reopened in May 2018 and from then until 31 December 2021, 4 applications were granted. However, as of July 2022, none of these prisoners has been transferred to an Irish prison.
- A Bill (draft legislation) to transpose EU Framework Decision 2008/909/JHA, which governs transfers of prisoners among EU States, was published at the end of July 2021. The Bill entitled the Criminal Justice (Mutual Recognition of Custodial Sentences) Bill 2021 went through Committee Stage (the third stage of the legislative process later that year). However, the Bill has yet to be passed despite Ireland exceeding the deadline for bringing the Framework Decision into domestic law by over 10 years. This legislation does not deal with transfers from the UK or other non-EU countries and amendments are necessary to address the significant legal issues have arisen in respect of transfers especially from the UK under the current process. Draft amendments were published in December 2021 but have yet to be passed into law.

- As no legislation has been passed the current situation regarding transfers of Irish people in prison overseas continues and according to the 2021 Report of the Minister for Justice on the Operation of the Transfer of Sentenced Persons Acts 1995 and 1997, no positive decisions were made in 2021. It is now over 6 years since the last inward transfer took place.

#### **UK Sentences**

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 (Imprisonment for Public Protection) sentence in the UK are not being approved, 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 prisoner's application. Applications from prisoners serving a life sentence in the UK will generally be refused by the UK authorities even if approved by the Irish authorities. This is because life sentences in Ireland are reviewed by the Parole Board after 12 years, considerably less time than the tariff a life sentence prisoner would have to serve in the UK.

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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.<sup>i</sup> 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

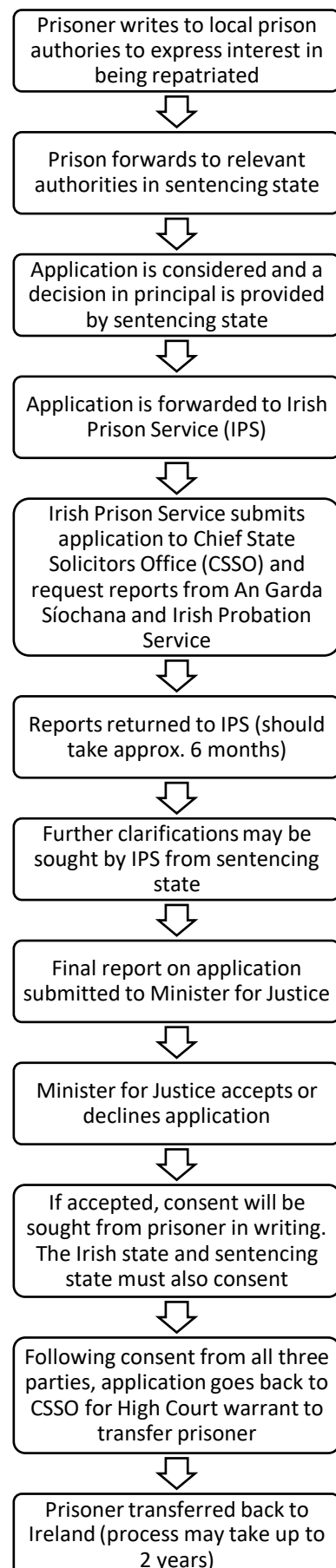
In order to apply to transfer your sentence both countries must be signatories to the Convention. Please note that you do not have a right to be transferred but you do have a right to apply for a transfer and to have your application considered.

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, for example some countries may require a prisoner to serve a certain period before an application will be considered.

## 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 in principle, 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 shorter timeframe but does not require consent of the prisoner in certain cases. Ireland has not yet signed up to this Framework Decision, which means Irish prisoners are not eligible to return to Ireland under this Framework. A Bill is currently before the Dáil, which if passed, will mean transfers from Irish prisoners in EU countries will be processed under that law. Until this legislation is passed, Irish people in prison in EU countries can continue to apply to transfer under current legislation (The Transfer of Sentenced Persons Acts).

The number of prisoners transferred into Ireland over the past number of years has been declining and since early 2016 no prisoners were transferred to Ireland. The table below shows the numbers of people who have been transferred into the State since Ireland signed up to the Convention.

**Inward Transfers Completed**

	<b>1996 – 2000</b>	<b>2001 – 2005</b>	<b>2006 – 2010</b>	<b>2011 – 2015</b>	<b>2016 – 2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Total</b>
<b>UK</b>	74	30	24	5	-	-	-	-	-	133
<b>USA</b>	3	1	-	-	-	-	-	-	-	4
<b>Canada</b>	1	-	-	-	-	-	-	-	-	1
<b>Hong</b>	1	-	-	-	-	-	-	-	-	1
<b>Isle of</b>	1	-	-	-	-	-	-	-	-	1
<b>Panama</b>	-	1	-	-	-	-	-	-	-	1
<b>Belgium</b>	-	-	-	1	-	-	-	-	-	1
<b>Spain</b>	-	-	3	2	1	-	-	-	-	6
<b>Japan</b>	-	-	1	-	-	-	-	-	-	1
<b>Northern</b>	-	-	1	1	-	-	-	-	-	2
<b>Hungary</b>	-	-	-	1	-	-	-	-	-	1
<b>Italy</b>	-	-	-	1	-	-	-	-	-	1
<b>Estonia</b>	-	-	-	1	-	-	-	-	-	1
<b>Total</b>	80	32	29	12	1	-	-	-	-	154

Source: Annual Report 2022 on the Transfer of Sentenced Persons Acts 1995 and 1997<sup>ii</sup>

**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. 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 in recent years. There are currently over 4,000 people detained in Irish prisons.<sup>iii</sup> If you would like further information on conditions in Irish prisons, please contact your ICPO caseworker.

## **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, but can be considered for parole if they have served at least 12 years of their sentence.

### **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. If you do not transfer your sentence, you should still declare your conviction if asked when you return to Ireland and it is a criminal offence not to do so in some cases.

### **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 satisfying 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.

### **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 now the only 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 is currently before the Dáil and Irish prisoners can still apply under existing legislation but the process may be slower.

### **ICPO August 2022**

**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.**

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<sup>i</sup> 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.

<sup>ii</sup> Department of Justice *Annual Report 2021 on the Transfer of Sentenced Persons Acts 1995 and 1997* <https://www.gov.ie/en/publication/26bad-report-on-the-operation-of-the-transfer-of-sentenced-persons-acts-01-january-2021-31-december-2021/>

<sup>iii</sup> On 01 July 2022, there were 1,148 people in custody and 4,595 people in the Irish prison system (including people on temporary release, prisoners in hospital or the Central Mental Hospital and life sentence people in the community. Irish Prison Service Prisoner Population Statistics [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/01-July-2022.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/01-July-2022.pdf)