

***REPORT***

***by***

***THE MINISTER FOR JUSTICE AND EQUALITY,***

***ALAN SHATTER T.D.***

***to***

***the Houses of the Oireachtas***

***on the Operation of***

***THE TRANSFER OF SENTENCED PERSONS ACTS,***

***1995 and 1997***

***for the period***

***1 January, 2011 - 31 December, 2011***

***(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 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 seventeenth Annual Report, presented in accordance with Section 11 of the 1995 Act, outlining details of matters relating to the operation of the Acts in 2011.

### **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 effected 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 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 effect 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 2011**

- 1.2.1 During the period covered by this report one prisoner transferred into and eleven prisoners transferred out of the State in 2011. In total, one hundred and forty two prisoners have now transferred here from abroad and one hundred and forty two prisoners have transferred out since the Act came into operation on 1 November, 1995. My Department continues to co-operate with the Irish Commission for Prisoners Overseas (ICPO) in providing information on applications.

## **APPLICATIONS FOR TRANSFER INTO IRELAND**

### **Work Processed in 2011**

2.0 Table "A" details the work processed in 2011 in respect of applications received for transfer into this jurisdiction. In addition to the applications received in 2011 (twenty eight), it also includes seven applications which were under consideration from the previous years.

**Table A - Inward Transfers - Work Processed in 2011**

Number of Applications Received in 2011	28
Number of Applications from previous years active at start of 2011	11
Number Transferred in 2011	1
Number Refused	5
Number Withdrawn	0
Number Deemed Closed	1
Number released	0
Number of applications active at end of 2011 (see Table D)	32

Twenty eight applications for transfer into this jurisdiction were received in 2011. Of these applications, nineteen were from the United Kingdom, three from Spain, two from Belgium, one was from Northern Ireland, one was from the Netherlands, one from Costa Rica and one from Australia.

During the period covered by this report, no prisoners were released by the sentencing State in the course of having their applications processed.

### **Comparisons to previous years**

2.1 A total of four hundred and forty five 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***

	<b><i>1995 - 2000</i></b>	<b><i>2001</i></b>	<b><i>2002</i></b>	<b><i>2003</i></b>	<b><i>2004</i></b>	<b><i>2005</i></b>	<b><i>2006</i></b>	<b><i>2007</i></b>	<b><i>2008</i></b>	<b><i>2009</i></b>	<b><i>2010</i></b>	<b><i>2011</i></b>	<b><i>Total</i></b>
<b>UK</b>	178	26	20	14	11	17	21	28	28	13	14	19	389
<b>USA</b>	4	-	-	1	1	-	-	-	-	1	1	-	8
<b>Canada</b>	1	-	-	-	-	-	-	-	-	1	1	-	3
<b>Hong Kong</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Greece</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Isle of Man</b>	2	-	1	-	-	-	-	-	-	-	-	-	3
<b>Spain</b>	4	-	-	-	-	2	-	1	1	1	1	3	13
<b>Italy</b>	-	-	1	-	-	-	-	-	-	1	1	-	3
<b>Panama</b>	-	-	1	-	-	1	-	-	-	-	-	-	2
<b>Netherlands</b>	-	-	-	1	-	-	-	-	-	-	-	1	2
<b>Japan</b>	-	-	-	-	1	-	1	-	-	1	-	-	3
<b>Australia</b>	-	-	-	-	1	-	-	1	-	1	1	1	5
<b>Trinidad &amp; Tobago</b>	-	-	-	-	1	-	-	-	-	-	-	-	1
<b>Germany</b>	-	-	-	-	-	-	1	1	-	-	-	-	2
<b>N. Ireland</b>	-	-	-	-	-	-	-	1	-	-	1	1	3
<b>Switzerland</b>	-	-	-	-	-	-	-	1	-	-	-	-	1
<b>Ecuador</b>	-	-	-	-	-	-	-	1	-	-	-	-	1
<b>Costa Rico</b>	-	-	-	-	-	-	-	-	-	-	-	1	1
<b>Belgium</b>	-	-	-	-	-	-	-	-	-	-	1	2	3
<b><i>Total</i></b>	191	26	23	16	15	20	23	34	29	19	21	28	445

***Inward Transfers Completed***

2.2 A total of one hundred and forty two 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 2011 by jurisdiction and by year of transfer.

**Table C - Inward Transfers Completed**

	<b><i>1996 - 2000</i></b>	<b><i>2001</i></b>	<b><i>2002</i></b>	<b><i>2003</i></b>	<b><i>2004</i></b>	<b><i>2005</i></b>	<b><i>2006</i></b>	<b><i>2007</i></b>	<b><i>2008</i></b>	<b><i>2009</i></b>	<b><i>2010</i></b>	<b><i>2011</i></b>	<b><i>Total</i></b>
<b>UK</b>	74	4	8	8	5	5	13	6	4	1	-	-	128
<b>USA</b>	3	-	-	-	1	-	-	-	-	-	-	-	4
<b>Canada</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Hong Kong</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Isle of Man</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Panama</b>	-	-	-	-	1	-	-	-	-	-	-	-	1
<b>Spain</b>	-	-	-	-	-	-	1	1	-	1	-	-	3
<b>Japan</b>	-	-	-	-	-	-	-	1	-	-	-	-	1
<b>Northern Ireland</b>	-	-	-	-	-	-	-	-	1	-	-	-	1
<b>Italy</b>	-	-	-	-	-	-	-	-	-	-	-	1	1
<b><i>Total</i></b>	80	4	8	8	7	5	14	8	5	2	0	1	142

**Applications for inward transfer under consideration at end of 2011**

2.3 At the end of 2011, there were thirty two 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". One of the active applications was received in 2009.

The application outstanding from 2009 is awaiting High Court papers. I have asked my officials to ensure that all outstanding applications are completed as soon as possible and that every effort is made in this regard.

***Table D - Inward Transfers, Active Applications at end of 2011***

	<i>Applied 2009</i>	<i>Applied 2010</i>	<i>Applied 2011</i>	<i>Total</i>
Awaiting advice from CSSO and other reports		-	9	9
Awaiting further papers from sentencing state	-	-	10	10
Approved by Minister, consent to be sought from offender and sentencing state	-	5	2	7
Awaiting consent of prisoner and sentencing state	-	-	4	4
High Court application	1	1	-	2
High Court warrant received	-	-	-	-
Total	1	6	25	32



## APPLICATIONS FOR TRANSFER OUT OF IRELAND

### Work Processed in 2011

3.0 Table "E" details the work processed in 2011 in respect of applications received for transfer out of this jurisdiction. In addition to the applications received in 2011 (twenty three), it also includes applications (thirty seven) which were active from previous years.

**Table E - Outward Transfers, Work Processed in 2011**

Number of Applications Received in 2011	<b>23</b>
Number of Applications from previous years, active at start of 2011	<b>37</b>
Number of applications refused	<b>7*</b>
Number Transferred	<b>11**</b>
Number Withdrawn / Deemed Closed	<b>7</b>
Number released	<b>3</b>
<b>Number of Applications active at end of 2011 (See Table H)</b>	<b>32</b>

*\*Figure includes five applications lodged in 2010 and two in 2011.*

*\*\*Figure includes three applications lodged in 2009 and eight in 2010.*

Twenty three new applications (including four re-applications) were received for transfer out of this jurisdiction in 2011; thirteen to the United Kingdom, two to Northern Ireland, two to Romania, two to Scotland and one to the Netherlands, Albania, Germany and Portugal respectively

Eleven prisoners were transferred out of this jurisdiction in 2011; eight to the United Kingdom, one to the Netherlands, one to Lithuania and one to Bulgaria. Eight of these completed applications were submitted in 2010 and three in 2009.

Seven applications in total were refused in 2011. 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.

Of the seven refusals four were refused by the United Kingdom Authorities, one by the Australian Authorities and one by the Dutch Authorities. One application was refused by this department due to the reduction in sentence the applicant would have received in the sentencing state.

Seven applications were deemed withdrawn or closed (four withdrawn and three deemed closed) during the processing of their applications in 2011. Of those that were deemed closed, two applications were deemed closed due to lack of documentation or response from the sentencing State and one application was closed due to ongoing proceedings against the prisoner. The other four applications were withdrawn at the request of the prisoner.

### *Comparisons to previous years*

- 3.1 At year's end, a total of three hundred and eighty four 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.**

	<b>1996 - 2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total</b>
<b>UK</b>	56	11	9	12	10	11	12	8	15	22	24	13	203
<b>NI</b>	38	9	6	2	-	1	2	4	3	3	11	2	81
<b>France</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Germany</b>	3	1	-	-	-	-	-	-	1	-	-	1	6
<b>Netherlands</b>	3	1	-	4	-	1	3	9	4	2	5	1	33
<b>Sweden</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Scotland</b>	2	2	2	2	-	-	-	2	-	-	1	2	13
<b>Canada</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Belgium</b>	1	-	-	-	-	-	-	-	1	-	-	-	2
<b>Italy</b>	1	-	1	1	-	-	-	-	-	-	-	-	3
<b>Spain</b>	1	1	-	-	-	-	-	-	-	2	1	-	5
<b>Portugal</b>	-	-	-	1	-	-	-	-	1	-	1	1	4
<b>Albania</b>	-	-	-	-	1	1	-	-	-	-	-	1	3
<b>USA</b>	-	-	-	-	-	-	1	-	-	-	-	-	1
<b>Lithuania</b>	-	-	-	-	-	-	-	2	-	3	2	-	7
<b>Latvia</b>	-	-	-	-	-	-	-	3	-	-	1	-	4
<b>Poland</b>	-	-	-	-	-	-	-	-	4	2	2	-	8
<b>Czech Republic</b>	-	-	-	-	-	-	-	-	1	1	-	-	2
<b>Moldova</b>	-	-	-	-	-	-	-	-	-	1	-	-	1
<b>Bulgaria</b>	-	-	-	-	-	-	-	-	-	-	1	-	1
<b>Switzerland</b>	-	-	-	-	-	-	-	-	-	-	1	-	1
<b>Romania</b>	-	-	-	-	-	-	-	-	-	-	-	2	2
<b>Australia</b>	-	-	-	-	-	-	-	-	-	-	1	-	1
<b>Total</b>	108	25	18	22	11	14	18	28	30	36	51	23	384

**Outward Transfers Completed**

3.2 A total of one hundred and forty two 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.**

	<b><i>1996 - 2000</i></b>	<b><i>2001</i></b>	<b><i>2002</i></b>	<b><i>2003</i></b>	<b><i>2004</i></b>	<b><i>2005</i></b>	<b><i>2006</i></b>	<b><i>2007</i></b>	<b><i>2008</i></b>	<b><i>2009</i></b>	<b><i>2010</i></b>	<b><i>2011</i></b>	<b><i>Total</i></b>
<b>UK</b>	15	5	4	7	4	3	12	8	2	8	12	8	88
<b>N. Ireland</b>	20	1	-	-	-	-	1	2	-	2	1	-	27
<b>Sweden</b>	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Netherlands</b>	1	-	-	-	-	-	1	3	7	3	2	1	18
<b>Germany</b>	-	1	-	-	-	-	-	-	-	-	-	-	1
<b>Scotland</b>	-	-	-	1	-	-	-	-	1	-	-	-	2
<b>USA</b>	-	-	-	-	-	-	-	1	-	-	-	-	1
<b>Poland</b>	-	-	-	-	-	-	-	-	-	1	-	-	1
<b>Spain</b>	-	-	-	-	-	-	-	-	-	1	-	-	1
<b>Lithuania</b>	-	-	-	-	-	-	-	-	-	-	-	1	1
<b>Bulgaria</b>	-	-	-	-	-	-	-	-	-	-	-	1	1
<b>Total</b>	37	7	4	8	4	3	14	14	10	15	15	11	142

**Applications for outward transfer under consideration at end of 2011**

3.3 At the end of 2011, there were thirty three applications under active consideration. These applications are listed in Table "H". Ten 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. Twelve applications were awaiting a decision from the receiving states and eleven applications were in the final stages of processing.

**Table H - Outward Transfers, Active Applications at end of 2011**

	<b><i>Total</i></b>
Preliminary examination by Department	<b>10</b>
Awaiting decision of receiving State	<b>12</b>
Final stages of processing	<b>11</b>
<b><i>Total</i></b>	<b>33</b>

## 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 2012.

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. In one case, it was not possible to facilitate a transfer as the sentencing state was not a party to the Convention.

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.

Alan Shatter, T.D.,

MINISTER FOR JUSTICE AND EQUALITY

April 2012