

REPORT

by

***THE MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM,
MR MICHAEL McDOWELL, 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, 2005- 31 December, 2005

(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 eleventh Annual Report, presented in accordance with Section 11 of the 1995 Act, outlining details of matters relating to the operation of the Acts in 2005.

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 fifty 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 2005

- 1.2 Five prisoners transferred into the State and three prisoners transferred out of the State in 2005. In total, one hundred and twelve prisoners have now transferred here from abroad and sixty three 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. The operation of the Convention is also kept under review by the Council of Europe Committee of Experts on the operation of European Conventions in the Penal Field (PC-OC) to which Committee my Department contributes.

APPLICATIONS FOR TRANSFER INTO IRELAND

Work Processed in 2005

2.0 Table "A" details the work processed in 2005 in respect of applications received for transfer into this jurisdiction. In addition to the applications received in 2005 (20), it also includes applications (27) which were under consideration from the previous years.

Table A - Inward Transfers - Work Processed in 2005

Number of Applications Received in 2005	20
Number of Applications from previous years active at start of 2005	27
Number Transferred in 2005	5
Number Refused	6
Number withdrawn	2
Number released	6
Number escaped from UK custody	1
Number of applications active at end of 2005 (see Table D)	27

Nineteen new applications and one re-application for transfer into this jurisdiction were received in 2005. Of these applications, seventeen were from the United Kingdom, two were from Spain and one was from Panama.

Five prisoners were transferred into this jurisdiction in 2005 from the United Kingdom.

Two prisoners withdrew their applications in 2005. These applicants withdrew after I had consented to their transfer.

Six prisoners were released by the sentencing State in the course of having their applications processed.

Eleven applications for inward transfer were submitted to me for final decision in 2005. Of these, five were approved for transfer and six applications were refused

These refusals were principally due to the applicants concerned having insufficient connections here to justify a transfer under the Convention.

Comparisons to previous years

2.1 A total of two hundred and ninety one 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>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>Total</i>
UK	8	44	41	33	21	31	26	20	14	11	17	266
USA	-	2	2	-	-	-	-	-	1	1	-	6
Canada	-	1	-	-	-	-	-	-	-	-	-	1
Hong Kong	-	-	1	-	-	-	-	-	-	-	-	1
Greece	-	1	-	-	-	-	-	-	-	-	-	1
Isle of Man	-	-	1	-	-	1	-	1	-	-	-	3
Spain	-	-	-	3	-	1	-	-	-	-	2	6
Italy	-	-	-	-	-	-	-	1	-	-	-	1
Panama	-	-	-	-	-	-	-	1	-	-	1	2
Holland	-	-	-	-	-	-	-	-	1	-	-	1
Japan	-	-	-	-	-	-	-	-	-	1	-	1
Australia	-	-	-	-	-	-	-	-	-	1	-	1
Trinidad & Tobago	-	-	-	-	-	-	-	-	-	1	-	1
Total	8	48	45	36	21	33	26	23	16	15	20	291

Inward Transfers Completed

2.2 A total of one hundred and twelve 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 2005 by jurisdiction and by year of transfer.

Table C - Inward Transfers Completed

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
UK	8	11	34	11	10	4	8	8	5	5	104
USA	-	2	1	-	-	-	-	-	1	-	4
Canada	-	1	-	-	-	-	-	-	-	-	1
Hong Kong	-	1	-	-	-	-	-	-	-	-	1
Isle of Man	-	-	-	1	-	-	-	-	-	-	1
Panama	-	-	-	-	-	-	-	-	1	-	1
Total	8	15	35	12	10	4	8	8	7	5	112

Applications for inward transfer under consideration at end of 2005

2.3 At the end of 2005, there were twenty seven 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". Five of the active applications were received in 2004, two in 2003, one in 2002 and one in 2001.

My officials are seeking to ensure that all outstanding applications are completed as soon as possible.

The application outstanding from 2001 is still awaiting the consent of both the prisoner and sentencing State. The application outstanding from 2002 requires further papers from the sentencing State. Of the two applications made in 2003, one is awaiting a High Court warrant and legal difficulties have been encountered in the case of the second. Of the five applications outstanding from 2004, one is awaiting the consent of both the prisoner and sentencing State and four are awaiting High Court warrants.

Table D - Inward Transfers, Active Applications at end of 2005

	<i>Applied 2001</i>	<i>Applied 2002</i>	<i>Applied 2003</i>	<i>Applied 2004</i>	<i>Applied 2005</i>	<i>Total</i>
Awaiting advice from CSSO and other reports	-	-	1	-	15	16
Awaiting further papers from sentencing state	-	1	-	-	2	3
Approved by Minister, consent to be sought from offender and sentencing state	-	-	-	1	-	1
Awaiting consent of sentencing state	1	-	-			1
High Court application	-	-	1	4	1	6
High Court warrant received	-	-	-	-	-	-
Total	1	1	2	5	18	27

APPLICATIONS FOR TRANSFER OUT OF IRELAND

Work Processed in 2005

3.0 Table "E" details the work processed in 2005 in respect of applications received for transfer out of this jurisdiction. In addition to the applications received in 2005 (fourteen), it also includes applications (twenty three) which were active from previous years.

Table E - Outward Transfers, Work Processed in 2005

Number of Applications Received	14
Number of Applications from previous years, active at start of 2004	23
Number of applications transmitted to receiving states	14
Number of applications refused by Ireland	7
Number Transferred	3
Number Withdrawn	2
Number released	1
Number of Applications active at end of 2005 (See Table H)	24

Fourteen applications were received for transfer out of this jurisdiction in 2005; eleven to the United Kingdom, one to Northern Ireland, one to Albania and one to the Netherlands.

Three prisoners were transferred out of this jurisdiction in 2005; all to the United Kingdom.

Fourteen applications were formally transmitted for consideration to receiving states in 2005. These included applications which had been made in 2004. Twelve applications were transmitted to the United Kingdom and two to Albania.

Seven applications were refused by me in 2005. These applications were principally refused owing to the substantial reduction in sentence, due to divergent rates of remission, which the applicants would have attracted in the event of a transfer. Two applicants withdrew their applications. One applicant was released from custody prior to the completion of his/her transfer application.

Comparisons to previous years

3.1 At year's end, a total of 198 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.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
UK	26	9	5	6	10	11	9	12	10	11	109
NI	14	9	6	4	5	9	6	2	-	1	56
France	-	-	-	1	-	-	-	-	-	-	1
Germany	-	-	1	1	1	1	-	-	-	-	4
Holland	2	-	1	-	-	1	-	4	-	1	9
Sweden	-	1	-	-	-	-	-	-	-	-	1
Scotland	2	-	-	-	-	2	2	2	-	-	8
Canada	1	-	-	-	-	-	-	-	-	-	1
Belgium	1	-	-	-	-	-	-	-	-	-	1
Italy	-	-	-	-	1	-	1	1	-	-	3
Spain	-	-	-	-	1	1	-	-	-	-	2
Portugal	-	-	-	-	-	-	-	1	-	-	1
Albania	-	-	-	-	-	-	-	-	1	1	2
Total	46	19	13	12	18	25	18	22	11	14	198

Outward Transfers Completed

3.2 A total of 63 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.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
UK	1	4	6	1	3	5	4	7	4	3	38
NI	-	9	6	5	-	1	-	-	-	-	21
Sweden	-	-	1	-	-	-	-	-	-	-	1
Holland	-	-	-	1	-	-	-	-	-	-	1
Germany	-	-	-	-	-	1	-	-	-	-	1
Scotland	-	-	-	-	-	-	-	1	-	-	1
Total	1	13	13	7	3	7	4	8	4	3	63

Applications for outward transfer under consideration at end of 2005

3.3 At the end of 2005, there were 24 applications under active consideration. These applications are listed in Table "H". Sixteen 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. Eight applications were awaiting a decision from the receiving states.

Table H - Outward Transfers, Active Applications at end of 2005

	<i>Total</i>
Preliminary examination by Department	16
Awaiting decision of receiving State	8
<i>Total</i>	24

CONCLUSION

4.0 Applications for both inward and outward transfers were received from persons serving 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 burglary to murder and the sentences ranged from 3 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 individual and particular 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 complexity of the information required and the various agencies which must be contacted to submit reports etc. My Department continues to make every effort to ensure that each application is processed as quickly as possible.

There were a small number of 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, as a matter of course, wrote to the relevant 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 a very few cases, it was not possible to facilitate a transfer as the sentencing state was not a party to the Convention.

My Department has continued to participate in and co-operate with the Council of Europe Committee of Experts on the operation of European Conventions in the Penal Field (PC-OC).

I must acknowledge the co-operation of the authorities in the other jurisdictions with whom we have had contact in connection with these transfers, especially 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 expertise and professionalism the successful transfer of sentenced persons into and out of Ireland could not be completed. I also wish to thank the Irish Prison Service and the Probation and Welfare Service for their essential contributions to the process.

Finally, I can assure the members of the Oireachtas that Ireland's established policy in this area will be continued by my Department and that, whenever feasible and where the interests of justice do not so preclude, I will continue to permit prisoners both here and abroad to transfer to their home jurisdiction in order to complete their sentences close to their families and friends and thus assist in their social rehabilitation and reintegration into their communities. I am confident that, in 2006, our operation of the Council of Europe Convention on the Transfer of Sentenced Persons through the Transfer of Sentenced Persons Act, 1995 and 1997 will continue to contribute to that policy.

Michael McDowell, T.D.,
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April, 2006