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*Number 16 of 1995*

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**TRANSFER OF SENTENCED PERSONS ACT, 1995**

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## TRANSFER OF SENTENCED PERSONS ACT, 1995

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AN ACT TO MAKE PROVISION FOR THE TRANSFER BETWEEN THE STATE AND PLACES OUTSIDE THE STATE OF PERSONS FOR THE TIME BEING DETAINED IN PRISONS, HOSPITALS OR OTHER INSTITUTIONS UNDER ORDERS MADE IN THE COURSE OF THE EXERCISE BY COURTS AND TRIBUNALS OF THEIR CRIMINAL JURISDICTION. [17th July, 1995]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act—

“*administering state*”, in relation to a sentenced person, means the Convention state to which the person has been transferred under [section 5](#) of this Act or in relation to which an application under [section 4](#) of this Act has been made by or on behalf of the person;

“*Convention*” means the Council of Europe Convention on the Transfer of Sentenced Persons done at Strasbourg on the 21st day of March, 1983, as supplemented by the Agreement on the Application among the Member States of the European Communities of the Council of Europe Convention on the Transfer of Sentenced Persons done at Brussels on the 25th day of May, 1987;

“*Convention state*” means a state (including the territories, if any, thereof) to which the Convention applies or a state or territory outside the State designated by the Minister for Foreign Affairs under [section 2](#) of this Act;

“*the Minister*” means the Minister for Justice;

“*order*” includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal;

“*sentence*” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time on account of the commission of an offence;

“*sentenced person*” means a person on whom a sentence has been imposed in the territory of a Convention state;

“*sentencing state*”, in relation to a sentenced person, means the Convention

state in which the sentence concerned was imposed on the person.

(2) In this Act a reference to an offence, in relation to the doing of an act or the making of an omission in a Convention country other than the State, includes a reference to the doing or making by a person of an act or omission which would constitute an offence but for the age or incapacity of the person.

Designation of states and territories.

2.—Where the State is a party to international arrangements providing for the transfer between the State and a state or territory that is not a party to the Convention the Minister for Foreign Affairs may designate that state or territory to be a Convention state for the purposes of this Act.

Supply of information to sentenced person.

3.—A person on whom a sentence has been imposed in the State and to whom the provisions of this Act concerning a transfer out of the State may apply shall be informed, in a language which he or she understands, as soon as may be after the commencement of the sentence, of the substance of this Act.

Application for transfer out of State.

4.—(1) A person on whom a sentence has been imposed in the State who wishes to be transferred out of the State to another Convention state, in order to serve the sentence or the balance of the sentence so imposed, may apply in writing to the Minister for such a transfer.

(2) Where a person is, by virtue of the person's age or physical or mental condition, incapable of making an application under *subsection (1)* of this section, a legal representative of the person or any other person considered by the Minister or the administering state to be an appropriate person for the purpose may make the application on the person's behalf.

(3) Subject to *subsection (4)* of this section, the Minister may grant an application under *subsection (1)* of this section, if the Minister is satisfied that the following requirements have been fulfilled:

- (a) that the sentenced person concerned is, for the purposes of the Convention, regarded by the administering state as a national of that state;
- (b) that the order under which the sentence concerned was imposed on the sentenced person is final;
- (c) that, at the time of the receipt of the application, the sentenced person had at least 6 months of the sentence concerned to serve or the sentence was of indeterminate length;
- (d) that the sentenced person or, in a case where the Minister or the administering state considers it necessary because of the age or physical or mental condition of the sentenced person, the legal representative of the sentenced person or any other person considered by the Minister or the administering state to be an

appropriate person for the purpose, consents in writing to the transfer;

(e) that the acts or omissions constituting the offence concerned would, if done or made in the administering state, constitute an offence under the law of that state; and

(f) that the administering state agrees to the transfer.

(4) If the Minister considers that exceptional circumstances exist which would warrant a transfer specified in *subsection (1)* of this section in a case where the sentenced person has less than 6 months of the sentence to serve, the requirement referred to in *paragraph (c)* of *subsection (3)* of this section shall not apply.

(5) The Minister may not grant an application under *subsection (1)* of this section unless the Minister is satisfied that all reasonable steps have been taken to inform the sentenced person concerned in writing in his or her own language—

(a) of the substance, so far as relevant to the person's case, of the international arrangements in accordance with which it is proposed to transfer him or her,

(b) of the effect in relation to the person of the warrant which it is proposed to issue in respect of him or her under [section 5](#) of this Act,

(c) of the effect in relation to the person of so much of the law of the country or territory to which he or she is to be transferred as has effect with respect to transfers under those arrangements, and

(d) of the powers of the Minister under [section 9](#) of this Act.

Issue of warrants for transfer of sentenced persons outside State.

**5.**—(1) The Minister may, on the grant of an application under [section 4](#) of this Act, issue a warrant for the transfer of the sentenced person concerned out of the State into the administering state concerned.

(2) A warrant issued under *subsection (1)* of this section shall authorise—

(a) the taking of the sentenced person to a place in any part of the State and his or her delivery at a place of departure from the State into the custody of a person authorised by the administering state to receive the person, for conveyance to the administering state concerned, and the keeping of the person in custody until the delivery is effected, and

(b) the removal of the sentenced person, by the person to whom he or she is so delivered, from the State.

(3) Where a warrant has been issued in respect of a sentenced person under this section, the person shall be deemed to be in legal custody at any time when he or she is being taken under the warrant to or from any place or being kept in custody under the warrant and, if the person escapes or is unlawfully at large, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

(4) The Minister may designate any person as a person who is for the time being authorised to take the sentenced person concerned to or from any place under the warrant or to keep the person in custody under the warrant.

(5) A person authorised pursuant to *subsection (4)* of this section to take the sentenced person to or from any place or to keep the person in custody shall, while so taking or keeping the sentenced person, have all the powers, authority, protection and privileges of a member of the Garda Síochána.

(6) Subject to *subsection (7)* of this section, the order by virtue of which a sentenced person is required to be detained at the time a warrant is issued in respect of him or her under this section shall continue to have effect after his or her removal from the State so as to apply to him or her if he or she is again in the State at any time when under that order he or she is to be or may be detained.

(7) The Minister may, if at any time after the removal of a sentenced person from the State the Minister considers it appropriate in order to give effect to the Convention, direct that the relevant order referred to in *subsection (6)* of this section be varied or cease to have effect.

(8) In this section a reference to an order by virtue of which a sentenced person is required to be detained at the time a warrant is issued in respect of him or her under this section includes a reference to an order by virtue of which he or she is required to be detained after the order by virtue of which he or she is required to be detained at that time ceases to have effect.

Request for transfer into State.

**6.**—(1) A sentencing state other than the State may request the Minister in writing to consent to the transfer into the State of a sentenced person on whom a sentence has been imposed in that sentencing state in order that he or she may serve the sentence or the balance of the sentence in the State.

(2) Without prejudice to *subsection (1)* of this section, a request for transfer into the State to serve the sentence or the balance of the sentence imposed in a sentencing state may be made directly to the Minister by or on behalf of a sentenced person.

(3) Subject to *subsection (4)* of this section, the Minister may consent to a request under *subsection (1)* or *subsection (2)* of this section if the Minister is satisfied that the following requirements have been fulfilled:

- (a) that the sentenced person concerned is, for the purposes of the Convention, regarded by the State as a national of the State and, for the purposes of this paragraph, a national of another state shall be regarded as a national of the State where it considers the transfer of the national appropriate having regard to any close ties which the national has with the State;
- (b) that the order under which the sentence concerned was imposed on the sentenced person is final;
- (c) that, at the time of the receipt of the request for the transfer concerned, the sentenced person had at least 6 months of the sentence concerned to serve or the sentence was of indeterminate length;
- (d) that the sentenced person or, in a case where the Minister or the sentencing state considers it necessary because of the age or physical or mental condition of the sentenced person, the legal representative of the sentenced person or any other person considered by the Minister or the sentencing state to be an appropriate person for the purpose, consents in writing to the transfer;
- (e) that the acts or omissions constituting the offence concerned would, if done or made in, or on the territory of, the State constitute an offence under the law of the State; and
- (f) that the sentencing state agrees to the transfer.

(4) If the Minister considers that exceptional circumstances exist which would warrant a transfer specified in *subsection (1)* or *subsection (2)* of this section in a case where the sentenced person has less than 6 months of the sentence to serve, the requirement referred to in *paragraph (c)* of *subsection (3)* of this section shall not apply.

(5) The Minister may not consent to a request under *subsection (1)* or *subsection (2)* of this section, unless the Minister is satisfied that all reasonable steps have been taken to inform the sentenced person concerned in writing in his or her own language—

- (a) of the substance, so far as relevant to the person's case, of the international arrangements in accordance with which it is proposed to transfer him or her,
- (b) of the effect in relation to the person of any warrant which may be issued in respect of him or her under [section 7](#) of this Act,
- (c) of the effect in relation to the person of the law relating to his or her detention under such a warrant, and

(d) of the powers of the Minister under [section 9](#) of this Act.

(6) A certificate purporting to be signed by the Minister or by a person duly authorised by the Minister under [section 15](#) (4) of the [Ministers and Secretaries Act, 1924](#) , to authenticate it and to certify that—

(a) as respects the proposed transfer into the State of a sentenced person following a request under *subsection (1)* of this section, the Minister is satisfied that the requirements specified in *paragraphs (a), (b), (d), (e) and (f)* and, where applicable, *(c)* of *subsection (3)* of this section have been fulfilled, and

(b) the Minister has given his or her consent to the transfer under this section,

shall, without proof of the signature of the person purporting to sign the certificate or that the person was the Minister or a person authorised to sign it, be evidence, unless the contrary is shown, of the matters stated in the certificate.

Issue of warrants for bringing of persons into State.

7.—(1) Where the Minister consents to a request for a transfer under [section 6](#) of this Act, he or she shall apply to the High Court for the issue of a warrant authorising the bringing of the sentenced person concerned into the State from a place outside the State and the taking of the person to, and his or her detention in custody at, such place or places in the State as may be specified in the warrant.

(2) Where an application is made to the High Court under *subsection (1)* of this section that court shall, if it is satisfied that the requirements specified in *paragraphs (a), (b), (d), (e)* and, where applicable, *(c)* of [section 6](#) (3) of this Act have been fulfilled and that the Minister consents to the transfer concerned, issue a warrant authorising the bringing of the sentenced person into the State and the taking of the person to, and his or her detention in custody at, such place or places in the State as are specified in the warrant.

(3) The High Court may specify, in a warrant under *subsection (2)* of this section, any place or places to which the court would have jurisdiction to commit the sentenced person concerned if the sentence in respect of which the person is being detained by the sentencing state was imposed by the court at the time of the issue of the warrant.

(4) Subject to *subsections (5) to (7)* of this section, the effect of a warrant under this section shall be to authorise the continued enforcement by the State of the sentence concerned imposed by the sentencing state concerned in its legal nature and duration, with due regard to any remission of sentence accrued in the sentencing state, but such a warrant shall otherwise have the same force and effect as a warrant imposing a sentence following conviction by that court.

(5) On an application under *subsection (1)* of this section, if the sentence concerned imposed by the sentencing state concerned is by its legal nature or duration incompatible with the law of the State, the court may adapt the sentence to a sentence prescribed by the law of the State for an offence similar to the offence for which the sentence was imposed.

(6) Where a sentence is adapted under *subsection (5)* it shall, as far as practicable, correspond in nature to the sentence imposed by the sentencing state and shall not, in any event, either—

(a) aggravate it by its legal nature or duration, or

(b) exceed the maximum penalty prescribed by the law of the State for a similar offence.

(7) A person transferred into the State under this Act to serve a sentence or the balance of a sentence imposed on him or her by another sentencing state may not appeal in the State against the conviction in respect of which the sentence was so imposed.

(8) Enforcement of the sentence specified in a warrant under this section shall cease where the State is notified by the sentencing state of any decision or measure, other than a decision or measure in respect of remission, as a result of which the sentence ceases to be enforceable in the sentencing state.

(9) The [Criminal Procedure Act, 1993](#), shall not apply to a person in respect of whom a warrant is issued under this section.

Operation of warrants under [section 7](#) and retaking of sentenced persons.

**8.**—Where a warrant has been issued in respect of a sentenced person under [section 7](#) of this Act, the following provisions shall have effect:

(a) the sentenced person concerned shall be deemed to be in legal custody at any time when he or she is being taken under the warrant to or from any place or being kept in custody under the warrant and, if the person escapes, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody;

(b) the Minister may designate any person as a person who is for the time being authorised to take the sentenced person concerned to or from any place under the warrant or to keep the person in custody under the warrant;

(c) a person authorised pursuant to *paragraph (b)* of this section to take the sentenced person to or from any place or to keep him or her in custody shall, while so taking or keeping the sentenced person, have all the powers, authority, protection and privileges

of a member of the Garda Síochána.

Revocation and  
variation of warrants.

**9.**—(1) If at any time it appears to the Minister appropriate, in order that effect may be given to the provisions of the Convention, that a warrant under this Act for the transfer of a person in or out of the State should be revoked or varied, the Minister may—

(a) in the case of a warrant under [section 5](#) of this Act—

(i) revoke the warrant, or

(ii) vary one or more of the provisions of the warrant;

and

(b) in the case of a warrant under [section 7](#) of this Act—

(i) apply to the High Court for an order revoking the warrant, or

(ii) apply to the High Court for an order varying one or more of the provisions of the warrant.

(2) On an application under *paragraph (b) of subsection (1)* of this section, the High Court may make an order referred to in *subparagraph (i) or (ii)* of that paragraph if it considers it appropriate to do so in order that effect may be given to the provisions of the Convention.

Applications for  
transfer into or out of  
State.

**10.**—(1) In deciding whether or not to grant an application under [section 4 \(1\)](#) of this Act or to consent to an application under *subsection (1) or (2) of section 6* of this Act the Minister shall not, without good reason, discriminate between applicants on the grounds of gender, marital or parental status, racial origin, age, political opinions or religious or other beliefs, health or sexual life, taking into account the operational requirements of the prison service and the welfare of the applicant.

(2) Where the Minister decides not to grant an application under [section 4 \(1\)](#) of this Act or consent to an application under *subsection (1) or (2) of section 6* of this Act, the Minister shall notify the applicant or the requesting state, as the case may be, of such decision and such notification shall, where practicable and where the interests of justice do not preclude so doing, include a statement specifying the grounds for such decision.

Annual report to Houses  
of Oireachtas.

**11.**—The Minister shall, within 4 months after the end of each year beginning with the year ending 31 December, 1995, make a report to each House of the Oireachtas on the operation in the preceding year of matters within this Act including information in relation to each application made under this Act.

Expenses.

**12.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance,

be paid out of moneys provided by the Oireachtas.

Short title.

**13.**—This Act may be cited as the Transfer of Sentenced Persons Act, 1995.