



STATUTORY INSTRUMENTS.

S.I. No. 417 of 2007

RULES OF THE SUPERIOR COURTS (TRANSFER OF SENTENCED
PERSONS) 2007

(Prn. A7/1250)

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 21st day of June, 2007.

JOHN L MURRAY
RICHARD JOHNSON
JOSEPH FINNEGAN
LIAM McKECHNIE
ELIZABETH DUNNE

LYNDON McCANN
PATRICK GROARKE
NOEL RUBOTHAM
MARY CUMMINS

I concur in the making of the following Rules of Court.

Dated this 4th day of July, 2007.

BRIAN LENIHAN

Minister for Justice, Equality and Law Reform

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 10th July, 2007.*

S.I. No. 417 of 2007

**RULES OF THE SUPERIOR COURTS (TRANSFER OF SENTENCED
PERSONS) 2007**

1. The Rules of the Superior Courts are hereby amended by the substitution for Order 128 thereof of the Order set out in Schedule 1 hereto.
2. These rules shall come into operation on the 1st day of August 2007.
3. The forms in Schedule 2 hereto shall be inserted as Appendix EE to the Rules of the Superior Courts.
4. These rules shall be construed together with the Rules of the Superior Courts 1986 to 2007 and may be cited as the Rules of the Superior Courts (Transfer of Sentenced Persons) 2007.

SCHEDULE 1

ORDER 128

TRANSFER OF SENTENCED PERSONS ACT 1995

TRANSFER OF EXECUTION OF SENTENCES ACT 2005

I. Preliminary

1. In this Order—

“the 1995 Act” means the Transfer of Sentenced Persons Act 1995;

“the 2005 Act” means the Transfer of Execution of Sentences Act 2005;

“Convention State” means a State to which the Convention applies or a State or territory designated as such by the Minister for Foreign Affairs under section 2 of the 1995 Act;

“designated country” means a State designated as such by the Minister for Foreign Affairs under section 5 of the 2005 Act;

“the Minister” means the Minister for Justice, Equality and Law Reform.

II. Proceedings under the 1995 Act

2. (1) An application by the Minister for the issue of a warrant under section 7(1) of the 1995 Act shall be made *ex parte*.

(2) Such application shall be grounded upon an *ex parte* docket entitled “In the matter of the Transfer of Sentenced Persons Act 1995 and in the matter of an Application by the Minister for Justice, Equality and Law Reform”. The *ex parte* docket shall—

- (a) contain a request that the Court issue a warrant pursuant to section 7 of the 1995 Act;
- (b) identify the sentenced person (within the meaning of the 1995 Act) concerned;
- (c) specify the sentence imposed on the sentenced person;
- (d) specify the Convention State where the sentenced person is serving the sentence concerned;
- (e) specify when and how the sentenced person concerned has consented to the transfer;
- (f) specify the balance of the sentence to be enforced in the State, and

- (g) specify the place or places in the State which the Minister will seek to have specified in the warrant in accordance with section 7(3) of the 1995 Act.

(3) Such application shall be verified by an affidavit or affidavits sworn by or on behalf of the Minister which shall—

- (a) indicate how and when the sentenced person concerned became a national of the State or is otherwise regarded as a national of the State;
- (b) exhibit the order under which the sentence concerned was imposed on the sentenced person (and, where such order is not in an official language of the State, a translation of the order into an official language of the State) and show that it is, at the time of application, final;
- (c) indicate the length of sentence served by the sentenced person concerned at the time of the receipt of the request for the transfer and any remission of sentence which has accrued together with the basis of the calculation of same. If the sentenced person has less than six months left to serve an averment that the Minister considers that exceptional circumstances exist which would warrant a transfer should be included, where appropriate;
- (d) exhibit the consent in writing of the sentenced person to the transfer or of the legal representative of the sentenced person or any other person considered by the Minister to be appropriate;
- (e) briefly describe the acts or omission constituting the offence for which the sentenced person concerned has been sentenced;
- (f) provide proof of such steps as shall have been taken to inform the sentenced person in writing in his or her own language—
 - (i) of the substance of the international arrangements in accordance with which it is proposed to transfer him or her;
 - (ii) 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 the 1995 Act;
 - (iii) of the effect in relation to the person of the law relating to his or her detention under such a warrant, and
 - (iv) of the powers of the Minister under section 9 of the 1995 Act;
- (g) exhibit the certificate of the Minister issued under section 6(6) of the 1995 Act.

(4) A warrant issued under section 7 of the 1995 Act shall be in Form 1, Appendix EE, with such modifications as may be appropriate.

3. (1) An application by the Minister pursuant to section 9(1)(b) of the 1995 Act to revoke a warrant or to vary one or more of the provisions of a warrant issued under section 7 of the 1995 Act shall be made ex parte to the Court and shall be grounded upon an affidavit or affidavits sworn by or on behalf of the Minister. Such affidavit or affidavits shall—

- (a) set forth the grounds for the revocation or variation (as the case may be);
- (b) set forth the particulars of the original application for the warrant, and
- (c) exhibit the warrant which has been previously issued by the Court.

(2) In any case in which the Court is of the opinion that the sentenced person concerned is or is likely to be adversely affected in any way by the making of an order under section 9 of the 1995 Act, the Court may direct that the application of the Minister be served upon the sentenced person concerned and may adjourn the application of the Minister and direct the production of the sentenced person concerned at a time and date specified by the Court. Upon production of the sentenced person concerned and having heard such submissions or representations as may be made by or on behalf of the sentenced person concerned and by or on behalf of the Minister the Court may make such order pursuant to section 9 of the 1995 Act as it thinks proper in the circumstances.

(3) Where a warrant under section 7 of the 1995 Act has been varied, the variation shall be endorsed on the original warrant.

III. Proceedings under the 2005 Act

4. (1) An application by the Minister for the issue of a warrant under section 8(1) of the 2005 Act shall be made ex parte.

(2) Such application shall be grounded upon an ex parte docket entitled “In the matter of the Transfer of Execution of Sentences Act 2005 and in the matter of an Application by the Minister for Justice, Equality and Law Reform”. The ex parte docket shall—

- (a) contain a request that the Court issue a warrant pursuant to section 8(1) of the 2005 Act;
- (b) identify the sentenced person (within the meaning of the 2005 Act) concerned;
- (c) specify the sentence imposed on the sentenced person;
- (d) specify the designated country where the sentenced person was to serve the sentence concerned;
- (e) specify the balance of the sentence to be enforced in the State;

(f) specify the place in the State to which the sentenced person is to be committed which the Minister will seek to have specified in the warrant.

(3) Such application shall be verified by an affidavit or affidavits sworn by or on behalf of the Minister which shall—

(a) indicate that the sentenced person concerned is a citizen of the State or has close ties with the State and, in the latter case, the nature of such ties;

(b) exhibit the order under which the sentence concerned was imposed on the sentenced person (and, where such order is not in an official language of the State, a translation of the order into an official language of the State) and show that it is, at the time of application, final;

(c) indicate any length of sentence served by the sentenced person concerned at the time of the receipt of the request for the execution of sentence in the State and any remission of sentence which has accrued together with the basis of the calculation of same. If the sentenced person was sentenced to less than six months or has less than six months left to serve an averment that the Minister considers that exceptional circumstances exist which would warrant the person serving the sentence or remainder of the sentence in the State should be included, where appropriate;

(d) briefly describe the acts or omission constituting the offence for which the sentenced person concerned has been sentenced;

(e) exhibit the certificate of the Minister issued under section 8(1) of the Act, and

(f) indicate that the circumstances referred to in section 10(2)(f) of the 2005 Act exist.

(4) A certified copy of each affidavit referred to in sub-rule (3) shall be served on the sentenced person as soon as may be after execution of the warrant concerned.

(5) A warrant issued under section 8(2) of the 2005 Act shall be in Form 2, Appendix EE, with such modifications as may be appropriate.

5. (1) An application by the Minister pursuant to section 8(6) of the 2005 Act to revoke a warrant or to vary one or more of the provisions of a warrant issued under section 8(1) of the 2005 Act shall be made *ex parte* to the Court and shall be grounded upon an affidavit or affidavits sworn by or on behalf of the Minister. Such affidavit or affidavits shall—

(a) set forth the grounds for revocation or the variation (as the case may be);

(b) set forth the particulars of the original application for the warrant, and

(c) exhibit the warrant which has been previously issued by the Court.

(2) Where a warrant under section 8(1) of the 2005 Act has been varied, the variation shall be endorsed on the original warrant and a certified copy of each affidavit referred to in sub-rule (1) shall be served on the sentenced person as soon as may be after execution of the warrant as varied.

(3) Where the warrant under section 8(1) has been executed and the Court is of the opinion that the sentenced person concerned is or is likely to be adversely affected in any way by the making of an order under section 8(6) of the 2005 Act, the Court may direct that the application of the Minister be served upon the sentenced person concerned and may adjourn the application of the Minister and direct the production of the sentenced person concerned at a time and date specified by the Court. Upon production of the sentenced person concerned and having heard such submissions or representations as may be made by or on behalf of the sentenced person concerned and by or on behalf of the Minister the Court may make such order pursuant to section 8(6) of the 2005 Act as it thinks proper in the circumstances.

6. (1) The sworn information of a member of the Garda Síochána not below the rank of inspector for the purpose of applying for the issue of a warrant under section 9(1) of the 2005 Act shall be in writing and shall be entitled “In the matter of the Transfer of Execution of Sentences Act 2005 and in the matter of an Application for the provisional arrest of C.D. on the Application of A.B.” and shall produce or exhibit that request.

(2) A warrant issued under section 9(1) of the 2005 Act shall be in Form 3, Appendix EE, with such modifications as may be appropriate.

7. (1) Subject to rule 8, a hearing under subsection (1) of section 10 of the 2005 Act shall proceed, and an application under subsection (3) of that section shall be heard, on evidence by affidavit, including any affidavit sworn for the purpose of an application under subsection (1) or subsection (6) of section 8 of the 2005 Act. However, in urgent cases or if the interests of justice so require, oral evidence may be received.

(2) An application by the Minister under subsection (3) of section 10 of the 2005 Act may be made *ex parte* at the hearing under subsection (1) of that section.

8. (1) At a hearing under subsection (1) of section 10 of the 2005 Act, the Court may, where that person contests the making by the Court of an order under section 10(1) of the 2005 Act in respect of him—

(a) direct the person to deliver within such time as is fixed by the Court to the solicitor for the Minister and to the Central Office, Points of Objection to the making of such an order;

(b) give directions as to the delivery of further affidavits;

(c) fix a date for the purpose of a hearing of the Points of Objection, and

(d) remand the person for that purpose.

(2) Points of Objection shall contain only a clear statement in summary form of the grounds and of the material facts on which the person relies to resist the making of such an order but not the evidence by which such material facts are to be proved.

(3) A warrant of committal following the making of an order under section 10(1) of the 2005 Act shall be in Form 4, Appendix EE, with such modifications as may be appropriate.

IV. Proceedings generally

9. The proper officer of the Central Office shall—

(a) keep a register containing particulars of all applications made under section 7 and section 9 of the 1995 Act and under section 8 and section 9 of the 2005 Act;

(b) keep a record and copy of all warrants issued under the 1995 Act and the 2005 Act by order of the Court, and

(c) retain the certificates of the Minister and the affidavits used in the application or applications in relation to each such warrant, as the case may be.

SCHEDULE 2

APPENDIX EE

TRANSFER OF SENTENCED PERSONS AND EXECUTION OF SENTENCES

No. 1

HIGH COURT

In the matter of the Transfer of Sentenced Persons Act 1995 and in the matter of an Application by the Minister for Justice, Equality and Law Reform

WARRANT AUTHORISING THE BRINGING OF A SENTENCED PERSON INTO THE STATE FROM A PLACE OUTSIDE THE STATE AND THE TAKING OF THE PERSON TO, AND HIS DETENTION IN CUSTODY AT A PLACE IN THE STATE

To the Commissioner and members of the Garda Síochána and the Governor ofPrison

WHEREAS on application under section 7(1) of the Transfer of Sentenced Persons Act 1995 made to the Court on 20... on behalf of the Minister for Justice, Equality and Law Reform, the Court was satisfied that:

the Minister has consented to a request under section 6(1) of the Transfer of Sentenced Persons Act 1995 by (the sentencing state) to the transfer into the State of.....(the sentenced person), currently in custody at, on whom a sentence has been imposed in the sentencing state in order that he may serve the *[balance of the] sentence in the State;

the sentenced person concerned is regarded by the State as a national of the State;

the order under which the sentence concerned was imposed on the sentenced person is final;

*[at the time of the receipt of the request for the transfer concerned, the sentenced person had at least six months of the sentence concerned to serve] *[the sentence was of indeterminate length] OR *[at the time of the receipt of the request for the transfer concerned, the sentenced person had less than six months of the sentence concerned to serve and the Minister considers that exceptional circumstances exist which would warrant a transfer];

the sentenced person *[or the legal representative of the sentenced person or another person considered by the Minister to be an appropriate person for the purpose] has consented in writing to the transfer;

the acts or omission constituting the offence for which the sentenced person concerned has been sentenced would, if done or made in, or on the territory of, the State, constitute an offence under the law of the State;

YOU ARE HEREBY COMMANDED to receive the said sentenced person

.....

from the persons authorised by the sentencing state to have custody of him and forthwith on such receipt to deliver the said sentenced person to the Governor of together with this warrant and you the said Governor are required to receive the said sentenced person into your custody and safely keep him according to law.

Dated

Signed

Registrar

*insert as appropriate

No. 2

HIGH COURT

In the matter of the Transfer of Execution of Sentences Act 2005 and in the matter of an Application by the Minister for Justice, Equality and Law Reform

WARRANT AUTHORISING THE ARREST OF A SENTENCED PERSON

To the Commissioner and members of the Garda Síochána

WHEREAS on application under section 8(1) of the Transfer of Execution of Sentences Act 2005 made to the Court on 20... on behalf of the Minister for Justice, Equality and Law Reform, the Court was satisfied that:

the Minister has consented to a request under section 7(1) of the Transfer of Execution of Sentences Act 2005 by (the sentencing country) to the execution in the State of *[part of] a sentence imposed in the sentencing country on a person(the sentenced person), who fled the sentencing country before he *[commenced]*[completed] serving that sentence;

a certificate to which section 8 of the Transfer of Execution of Sentences Act 2005 applies was produced;

the sentenced person is an Irish citizen, or has, in the opinion of the Minister, close ties with the State;

the order imposing the sentence in the sentencing country is final;

*[the term of the sentence concerned is not less than six months or, where the sentenced person has already served part of the sentence concerned at the time of his fleeing to the State, there was not less than six months of the sentence remaining to be served] OR *[at the time of the receipt of the request for the transfer concerned, the sentenced person had less than six months of the sentence concerned to serve and the Minister considers that exceptional circumstances exist that warrant the sentenced person serving the *[remainder of the] sentence in the State];

the offence under the law of the sentencing country in respect of which the sentence was imposed corresponds to an offence under the law of the State;

YOU ARE HEREBY COMMANDED to arrest the said sentenced person

.....

and to bring him as soon as may be after his arrest before the High Court to be dealt with according to law.

Dated

Signed

Registrar

*insert as appropriate

No. 3

HIGH COURT

In the matter of the Transfer of Execution of Sentences Act 2005

WARRANT FOR ARREST OF A SENTENCED PERSON ON REQUEST FOR PROVISIONAL ARREST

To the Commissioner and members of the Garda Síochána

WHEREAS from the information on oath and in writing of of.....

a member of the Garda Síochána not below the rank of inspector given with the consent of the Minister for Justice, Equality and Law Reform under section 9(1) of the Transfer of Execution of Sentences Act 2005 to the Court on 20..., the Court was satisfied that:

a request for the provisional arrest ofhas been made on behalf of (the sentencing country);

in relation to that request, there has been compliance with section 9 of the Transfer of Execution of Sentences Act 2005;

YOU ARE HEREBY COMMANDED to arrest the said

..... and to bring him as soon as may be after his arrest before the High Court to be dealt with according to law.

Dated

Signed

Registrar

HIGH COURT

In the matter of the Transfer of Execution of Sentences Act 2005 and in the matter of an Application by the Minister for Justice, Equality and Law Reform

WARRANT OF COMMITTAL OF A SENTENCED PERSON

To the Commissioner and members of the Garda Síochána and the Governor ofPrison

WHEREAS at a hearing on 20...under subsection (1) of section 10 of the Transfer of Execution of Sentences Act 2005, when(the sentenced person) was before the Court, the Court was satisfied that:

the Minister for Justice, Equality and Law Reform has consented to a request under section 7(1) of the Transfer of Execution of Sentences Act 2005 by (the sentencing country) to the execution in the State of *[part of] a sentence imposed in the sentencing country on the sentenced person, who fled the sentencing country before he *[commenced]*[completed] serving that sentence;

the sentenced person is an Irish citizen *[or the Minister is of the opinion that the sentenced person has close ties with the State];

the order imposing the sentence in the sentencing country is final;

*[the term of the sentence concerned is not less than six months or, where the sentenced person has already served part of the sentence concerned at the time of his fleeing to the State, there was not less than six months of the sentence remaining to be served] OR *[at the time of the receipt of the request for the transfer concerned, the sentenced person had less than six months of the sentence concerned to serve and the Minister considers that exceptional circumstances exist that warrant the sentenced person serving the *[remainder of the] sentence in the State];

the offence under the law of the sentencing country in respect of which the sentence was imposed corresponds to an offence under the law of the State;

circumstances exist whereby—

- (i) had the sentenced person's surrender been sought pursuant to a European arrest warrant, the surrender of the person would not be prohibited under Part 3 (other than section 38(1)) of the European Arrest Warrant Act 2003, or
- (ii) had the sentenced person's extradition been sought, his or her extradition would not be prohibited under the Extradition Acts 1965 to 2001 (other than section 10(1) or 10(1A) (inserted by section 11(a)

of the Extradition (European Union Conventions) Act 2001) of the Extradition Act 1965);

THE COURT ORDERED that the sentenced person be committed to for the period of

YOU ARE HEREBY COMMANDED to deliver the said sentenced person
to the Governor of together with this warrant and you the said Governor are required to receive the said sentenced person into your custody and safely keep him according to law.

Dated

Signed
Registrar

*insert as appropriate

EXPLANATORY NOTE

(This does not form part of the instrument and does not purport to be a legal interpretation)

These Rules prescribe the procedure to be followed under the Transfer of Sentenced Persons Act 1995 and the Transfer of Execution of Sentences Act 2005.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2
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(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
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(Tel: 01-6476834/35/36/37; Fax: 01-6476843)
or through any bookseller.

€3.81

ISBN 1-4064-3209-1



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