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TRANSFER OF EXECUTION OF SENTENCES ACT 2005

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ACTS REFERRED TO

Criminal Justice Act 1960	1960, No. 27
Criminal Law (Jurisdiction) Act 1976	1976, No. 14
Criminal Procedure Act 1993	1993, No. 40
European Arrest Warrant Act 2003	2003, No. 45
Extradition Act 1965	1965, No. 17
Extradition Acts 1965 to 2001	
Extradition (European Union Conventions) Act 2001	2001, No. 49
Ministers and Secretaries Act 1924	1924, No. 16
Transfer of Sentenced Persons Act 1995	1995, No. 16



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TRANSFER OF EXECUTION OF SENTENCES ACT 2005

AN ACT TO GIVE EFFECT TO ARTICLE 2 OF THE ADDITIONAL PROTOCOL TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS DONE AT STRASBOURG ON 18 DECEMBER 1997 AND CHAPTER 5 OF TITLE III OF THE CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT OF 14 JUNE 1985 BETWEEN THE GOVERNMENTS OF THE STATES OF THE BENELUX ECONOMIC UNION, THE FEDERAL REPUBLIC OF GERMANY AND THE FRENCH REPUBLIC ON THE GRADUAL ABOLITION OF CHECKS AT THEIR COMMON BORDERS DONE AT SCHENGEN ON 19 JUNE 1990.

[13th December, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, except where the context otherwise requires— Interpretation.

“Additional Protocol” means the Additional Protocol to the Convention on the Transfer of Sentenced Persons done at Strasbourg on 18 December 1997;

“designated country” has the meaning assigned to it by *section 5*;

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

“Saint Patrick’s Institution” has the same meaning as it has in the Criminal Justice Act 1960;

“Schengen Convention” means the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders done at Schengen on 19 June 1990;

“sentence” means any punishment consisting of a deprivation of a person’s liberty for a limited or unlimited period of time imposed by a court or tribunal consequent upon a person’s conviction for an offence;

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“sentenced person” means a person on whom a sentence has been imposed in the territory of a designated country;

“sentencing country” means, in relation to a person on whom a sentence has been imposed, the designated country in which that sentence was imposed.

(2) In this Act—

- (a) a reference to a section, is a reference to a section of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and
- (c) a reference to any enactment is a reference to that enactment as amended, extended or adapted, whether before or after the passing of this Act, by or under any subsequent enactment.

Amendment of section 11 of Transfer of Sentenced Persons Act 1995 (Annual report to Houses of Oireachtas).

2.—Section 11 of the Transfer of Sentenced Persons Act 1995 is amended by the deletion of “including information in relation to each application made under this Act” and the substitution thereof of “and the Transfer of Execution of Sentences Act 2005, including information in relation to each application made under this Act or that Act”.

Application of Act.

3.—This Act applies in relation to sentences, whether imposed before or after its passing.

Corresponding offences.

4.—For the purposes of this Act—

- (a) an offence under the law of the sentencing country corresponds to an offence under the law of the State where the act or omission constituting the offence under the law of the sentencing country would, if committed in the State, constitute an offence under the law of the State, and
- (b) an offence under the law of the State corresponds to an offence under the law of the sentencing country where the act or omission constituting the offence under the law of the State would, if committed in the sentencing country, constitute an offence under the law of the sentencing country.

Designated countries.

5.—(1) The Minister for Foreign Affairs may by order designate for the purposes of this Act—

- (a) a country that has ratified, accepted, approved or acceded to the Additional Protocol (including a country that has ratified, accepted, approved or acceded to the Additional Protocol (other than Article 3)),

- (b) a country that has ratified or acceded to the Schengen Convention, or
- (c) a country other than a country to which *paragraph (a) or (b)* applies that has given effect under its laws to the provisions of Chapter 5 of Title III of the Schengen Convention or Article 2 of the Additional Protocol,

and a country that for the time being stands so designated is hereafter in this Act referred to as “a designated country”.

(2) The Minister for Foreign Affairs may, by order, amend or revoke an order under this section, including an order under this subsection.

(3) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

6.—(1) Subject to *subsection (2)*, where a person in respect of whom a sentence has been imposed in the State flees from the State before he or she has—

Request for execution of sentence in designated country.

- (a) commenced serving that sentence, or
- (b) completed serving that sentence,

and who is, for the time being, in a designated country, the Minister may request the person in the designated country concerned who performs functions the same as or similar to those performed by the Minister under this Act to consent to and arrange for the first-mentioned person’s serving the sentence or remainder of the sentence, as the case may be, in that country.

(2) The Minister shall not make a request under *subsection (1)* unless—

- (a) under the law of the designated country the person is, or is deemed to be, a national of the designated country,
- (b) the order imposing the sentence is final, and
- (c) subject to *subsection (3)*, the term of the sentence concerned is not less than 6 months, or where the person has already served part of the sentence concerned, at the time of his or her fleeing the State there was not less than 6 months of the sentence remaining to be served.

(3) The Minister may, in relation to a person—

- (a) sentenced to less than 6 months imprisonment, or
- (b) who has less than 6 months remaining to serve of a sentence,

make a request under *subsection (1)*, if he or she considers that exceptional circumstances exist which warrant the person serving the sentence or remainder of the sentence, as the case may be, in the designated country concerned.

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Request for
execution of
sentence in State.

7.—(1) Subject to *subsection (2)*, the Minister may, upon receipt of a request in writing from a sentencing country to consent to the execution in the State of a sentence imposed in the sentencing country, or part of a sentence so imposed, on a person who fled to the State before he or she—

- (a) commenced serving that sentence, or
- (b) completed serving that sentence,

give such consent.

(2) The Minister shall not give his or her consent under *subsection (1)* unless—

- (a) the person is an Irish citizen or, where the person is not an Irish citizen, the person has, in the opinion of the Minister, close ties with the State,
- (b) the order imposing the sentence in the sentencing country is final,
- (c) subject to *subsection (3)*, the term of the sentence concerned is not less than 6 months, or where the person has already served part of the sentence concerned, at the time of his or her fleeing to the State there was not less than 6 months of the sentence remaining to be served,
- (d) under the law of the sentencing country, the offence in respect of which the sentence was imposed corresponds to an offence under the law of the State, and
- (e) the Minister is of the opinion that, having regard to all the circumstances, it would be appropriate for him or her to give such consent.

(3) The Minister may, in relation to a person—

- (a) sentenced to less than 6 months imprisonment, in the sentencing country, or
- (b) who has less than 6 months remaining to serve of a sentence imposed in the sentencing country,

give his or her consent under *subsection (1)*, if he or she considers that exceptional circumstances exist that warrant the person serving the sentence or remainder of the sentence, as the case may be, in the State.

Consent to request
under *section 7*.

8.—(1) The Minister, or a person authorised under section 15 of the Ministers and Secretaries Act 1924 to authenticate the seal of the Minister, shall, upon the giving by the Minister of his or her consent under *section 7*, certify in writing that, in relation to a sentenced person—

- (a) a request has been received under that section, and
- (b) the Minister has given his or her consent to that request,

and the Minister shall, as soon as practicable thereafter, apply, or cause an application to be made, to the High Court for a warrant authorising the arrest of the sentenced person concerned.

(2) Upon an application under *subsection (1)*, the High Court shall issue a warrant authorising the arrest of the sentenced person concerned if—

- (a) a certificate to which this section applies is produced to the court, and
- (b) it is satisfied that—
 - (i) the person is an Irish citizen or, where the person is not an Irish citizen, the person has, in the opinion of the Minister, close ties with the State,
 - (ii) the order imposing the sentence in the sentencing country is final,
 - (iii) subject to *section 7(3)*, the term of the sentence concerned is not less than 6 months, or where the person has already served part of the sentence concerned, at the time of his or her fleeing to the State there was not less than 6 months of the sentence remaining to be served, and
 - (iv) 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.

(3) A certificate to which this section applies shall include a statement of—

- (a) the name of the sentenced person in relation to whom a request under *section 7* has been made,
- (b) the sentence imposed in relation to him or her in the sentencing country,
- (c) the period of the sentence so imposed remaining to be served, where the person has already served part of the sentence, and
- (d) the address of the place in the State at which the person is for the time being residing (if that is known).

(4) A certificate to which this section applies shall, unless the contrary is proved, be evidence of the matters specified in the certificate.

(5) A warrant issued under this section may be executed by any member of the Garda Síochána in any part of the State and may be so executed notwithstanding that it is not in the possession of the member when he or she executes the warrant, and the warrant shall be shown to and a copy thereof given to the person arrested at the time of his or her arrest or, if the warrant is not then in the possession of the member, not later than 24 hours after his or her arrest.

(6) The Minister may at any time apply to the High Court for an order varying the terms of, or revoking, a warrant issued under this section.

(7) The High Court may, upon an application under *subsection (6)*, revoke or vary a warrant issued under this section if it is satisfied that the revocation or variation is necessary in order to ensure compliance with the provisions of this Act.

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(8) A person arrested under a warrant issued under this section shall, as soon as may be after his or her arrest, be brought before the High Court.

Provisional arrest.

9.—(1) The High Court may, upon the sworn information of a member of the Garda Síochána not below the rank of inspector given with the consent of the Minister, issue a warrant for the arrest of any person if it is satisfied that—

- (a) a request for the provisional arrest of that person has been made on behalf of a sentencing country, and
- (b) in relation to the request, there has been compliance with this section.

(2) A request for the provisional arrest of a person made on behalf of a sentencing country shall state—

- (a) the name, and date and place of birth, of the person concerned,
- (b) the address of the place in the State at which the person is for the time being residing (if that is known),
- (c) the nature of the offence, the circumstances in which the offence was committed and the time at which and place where the offence was committed,
- (d) the nature, duration and date of commencement of the sentence (or, where the sentenced person fled from the sentencing country before he or she began serving the sentence, the date on which the sentence should have commenced), and
- (e) where the person fled the sentencing country after having served part of the sentence but before he or she had completed serving the sentence, the period of the sentence that he or she served.

(3) A warrant issued under this section may be executed by any member of the Garda Síochána in any part of the State and may be so executed notwithstanding that it is not in the possession of the member when he or she executes the warrant, and the warrant shall be shown to and a copy thereof given to the person arrested at the time of his or her arrest or, if the warrant is not then in the possession of the member, not later than 24 hours after his or her arrest.

(4) A person arrested under a warrant issued under this section shall, as soon as may be after his or her arrest, be brought before the High Court and the High Court shall, unless the certificate to which *section 8* applies is produced to the court, remand the person in custody or on bail pending the production to it of that certificate, and for that purpose the High Court shall have the same powers of remand as it would have if the person were brought before it charged with an indictable offence.

(5) If a certificate to which *section 8* applies is not produced in accordance with *subsection (4)* before the expiration of the period of 18 days from the date on which the person is arrested under a warrant issued under this section, the person concerned shall be released from custody forthwith.

(6) If, in relation to a person who has been released in accordance with *subsection (5)*, a request to which *section 7* applies is received by the Minister, an application may be made under and in accordance with *section 8(1)* for a warrant authorising the arrest of that person.

(7) Where a warrant authorising the arrest of a person is issued under this section, then in any subsequent proceedings it shall be presumed unless the contrary is proved that a request for the provisional arrest of that person has been made by the sentencing country concerned.

10.—(1) Subject to *subsections (2) and (3)*, the High Court may, where a person is—

Execution of
sentence imposed in
sentencing country.

- (a) brought before it under *subsection (8) of section 8*,
- (b) brought before it under *subsection (4) of section 9* at the same time as the certificate is produced in accordance with the said *subsection (4)*, or
- (c) before the High Court, by reason of having been remanded under the said *subsection (4)*, at the same time as, or at any time after, the certificate is produced in accordance with the said *subsection (4)*,

make an order committing the person to a prison or Saint Patrick's Institution, as may be appropriate, for a period equal to—

- (i) in the case of a person who fled from the sentencing country before he or she began serving the sentence concerned, the period of the sentence less the deductible period, or
- (ii) in the case of a person who served part of the sentence concerned but fled from the sentencing country before he or she completed serving that sentence, the period of the sentence that remains unserved less the deductible period.

(2) The High Court shall not make an order under *subsection (1)* unless—

- (a) the Minister has given his or her consent under *subsection (1) of section 7* in relation to the person concerned,
- (b) the person is an Irish citizen or, where the person is not an Irish citizen, the Minister is of the opinion that the person has close ties with the State,
- (c) the order imposing the sentence in the sentencing country is final,
- (d) subject to *subsection (3) of section 7*, the term of the sentence concerned is not less than 6 months or, where the person has already served part of the sentence concerned at the time of his or her fleeing to the State, there was not less than 6 months of the sentence remaining to be served,

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(e) 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,

(f) circumstances exist whereby—

(i) had the 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 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).

(3) Where a person who was sentenced in the sentencing country to a sentence that is greater than the maximum term of imprisonment to which the person would be liable if he or she was convicted in the State of an offence corresponding to the offence of which he or she was convicted in the sentencing country, the High Court may, upon the application of the Minister, commit the person to prison pursuant to an order under *subsection (1)* for a period not exceeding—

(a) in the case of a person who fled from the sentencing country before he or she began serving the sentence concerned, the said maximum term less the deductible period, or

(b) in the case of a person who served part of the sentence concerned but fled from the sentencing country before he or she completed serving that sentence, the said maximum term less—

(i) the period of the sentence actually served by the person in the sentencing country, and

(ii) the deductible period.

(4) (a) Any element of, or condition attaching to, a sentence, or requirement to which a sentence is subject, that renders the sentence less favourable to a sentenced person than the penalty to which he or she would be liable were he or she to be convicted in the State of an offence corresponding to the offence of which he or she was convicted in the sentencing country, shall, if the High Court so directs, not apply to a sentenced person who is committed to a prison or Saint Patrick's Institution pursuant to an order under *subsection (1)*.

(b) *Paragraph (a)* shall not apply to an element, condition or requirement relating to the duration of the sentence concerned.

(5) A person to whom an order under *subsection (1)* applies shall not be entitled to bring any appeal in the State against the conviction, or the sentence imposed, in the sentencing country.

(6) (a) Subject to *paragraph (b)*, where the State is notified by the sentencing country that a person to whom an order

under *subsection (1)* applies would, under the law of the sentencing country, be entitled to be released from detention forthwith or on and from such date as may be specified in the notification concerned, the person shall be released from prison or Saint Patrick's Institution, as the case may be, either forthwith or on and from that date, as may be appropriate.

(b) *Paragraph (a)* shall not apply if—

(i) (I) the person has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State,

(II) on the date on which he or she would, but for this subparagraph, be entitled to be released under *paragraph (a)*, all or part of the term of imprisonment remains unexpired, and

(III) the person is required to serve all or part of the remainder of that term of imprisonment,

or

(ii) (I) the person has been charged with, or convicted of, an offence in the State, and

(II) on the date on which he or she would, but for this subparagraph, be entitled to be released under *paragraph (a)*, he or she is required to be in custody, by virtue of having been remanded in custody pending his or her being tried, or the imposition of sentence, as the case may be, in respect of that offence.

(7) In this section “deductible period” means, in relation to a person to whom this section applies—

(a) the period (if any) spent by the person in custody in the State pending the making of an order under this section, and

(b) the part (if any) of the term of the sentence that, under the law of the sentencing country, the person is not required to serve.

11.—The Criminal Procedure Act 1993 shall not apply to a person to whom an order under *subsection (1)* of *section 10* applies. Criminal Procedure Act 1993 disappplied.

12.—Proceedings for an offence under section 3 of the Criminal Law (Jurisdiction) Act 1976 shall not be brought against a person to whom an order under *subsection (1)* of *section 10* applies. Prohibition on certain proceedings.

13.—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. Expenses.

14.—(1) This Act may be cited as the Transfer of Execution of Sentences Act 2005. Short title and commencement.

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(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.