



**AN BILLE UM FHORGHNÍOMHÚ PIANBHREITHEANNA A
AISTRIÚ 2003**
TRANSFER OF EXECUTION OF SENTENCES BILL 2003

EXPLANATORY AND FINANCIAL MEMORANDUM

Background

The Bill gives effect to—

- (a) the provisions in Article 2 of the Additional Protocol to the 1983 Council of Europe Convention on the Transfer of Sentenced Persons which sets out the rules applicable to the transfer of execution of sentences where sentenced persons have absconded from the sentencing state to his/her state of nationality, and
- (b) Articles 67-69 of the Schengen Convention (i.e. Chapter 5 of Title III of the Convention) dealing with transfer of enforcement of criminal judgements.

Article 2 and Chapter 5 cover the same ground, i.e. the transfer of the execution of sentences where the sentenced person has fled from the sentencing state to his/her state of nationality.

General Provisions of the Bill

This Bill provides that—

- (a) in the case of a person sentenced by an Irish court who has fled from this State to his/her state of nationality without either commencing or completing the sentence, the Minister for Justice, Equality & Law Reform may request the authorities in that state to enforce the Irish sentence,
- (b) in the case of Irish nationals who have fled back to this State from a sentencing state prior to the commencement or completion of a sentence, the Minister must give his/her consent to a request from the sentencing state before an application can be made to the High Court for a warrant for the person's arrest. The Minister will be required to satisfy himself/herself as to certain matters before the application is made to the High Court. The criteria include a discretionary provision whereby the Minister may, having regard to all the circumstances, decide not to make an application, and
- (c) following arrest, the High Court may make orders for the carrying out of the foreign sentence in Ireland.

Layout of the Bill

The Bill is laid out in 13 sections as follows:

Section 1 — Interpretation

This section provides for the definition of certain terms used in the Bill.

Section 2 — Application of the Act

This section provides for the application of the Act in relation to sentences imposed before or after its passing.

Section 3 — Corresponding offences

This section provides for a definition of corresponding offences in different sentencing countries.

Section 4 — Designated countries

The Bill will be operated with states that have ratified the Additional Protocol or the Schengen Convention and that have also been designated for the purposes of this Bill by the Minister for Foreign Affairs.

Section 5 — Request for execution of sentence in designated country

This section provides that the Minister may request a designated country to consent to and arrange for the serving of a sentence by a person who is a national of that state in respect of whom a sentence has been imposed in Ireland and who has fled to his/her country of nationality before any or all of the sentence has been served. The Minister must be satisfied that:

- (a) the person concerned is regarded under the law of the designated country as a national of that country,
- (b) the order under which the sentence concerned was imposed on the sentenced person is final, and
- (c) at the time of issuing the request the sentenced person had at least 6 months of the sentence concerned to serve.

There is also provision for the Minister to make requests to the other state in exceptional circumstances where a person has less than 6 months of the sentence remaining to serve.

Section 6 — Request for execution of sentence in State

This section provides that the Minister may consent to a request from a sentencing country (that has been designated under *section 4*) to execute a sentence, or part thereof, imposed on a person who has fled to the State, i.e. for the execution in this State of a sentence imposed in the sentencing country on an Irish national who has now fled to the State.

Before giving consent the Minister must satisfy himself that certain requirements have been fulfilled:

- (a) that the sentenced person concerned is an Irish citizen or has close ties with the State,
- (b) the order under which the sentence concerned was imposed on the sentenced person is final,

- (c) that the sentenced person has at least 6 months of the sentence concerned to serve,
- (d) dual criminality applies (the offence concerned would constitute a criminal offence if committed in this State), and
- (e) that, having regard to all the circumstances, it would be in order for the Minister to give his/her consent.

The possibility of relaxing the requirement that at least 6 months of the sentence must remain to be served is also provided for.

Section 7 — Consent to request under section 6

This section sets out the procedure by which a sentence imposed in another state may be executed in this State. It provides for certification by or on behalf of the Minister that he/she consents to taking over the enforcement of the sentence, and provides for an application to be made to the High Court for the issue of a warrant authorising the arrest of the sentenced person concerned. A judge of the High Court, on production of the Minister's certificate, may issue a warrant for the arrest of the person concerned if satisfied there has been compliance with *subsection (2) of section 6*.

The Minister's certificate must specify certain information as laid out in this section.

Certain evidentiary matters are also provided for in this section, i.e. that a certificate purporting to be signed by the Minister (or by a person duly authorised) be evidence, unless the contrary is shown, of the matters stated in the certificate. It also provides that a warrant may be executed by any member of the Garda Síochána in any part of the State even if it is not in the possession of the member at the time. However, the warrant must be shown to, and a copy given to, the person arrested, if not at the time of arrest, within 24 hours thereafter.

There is also a provision within this section for variation or revocation of warrants.

A person arrested under a warrant must be brought before the High Court as soon as possible.

Section 8 — Provisional arrest

This section provides for the provisional arrest of a person under this Act, prior to the arrival of the documents supporting the request.

Under Article 68(2) of the Schengen Convention and Article 2(2) of the Additional Protocol a sentencing state may request (prior to the arrival of documents supporting the request and prior to the decision on the request) that a requested Contracting Party take the sentenced person into police custody or take other measures to ensure that the person remains within the territory of the requested Contracting Party.

A warrant for the arrest of a person may be issued by the High Court on the sworn information of a member of the Garda Síochána, not below the rank of Inspector, given with the consent of the Minister, that a request for the person's provisional arrest has been made by a sentencing country.

The request must include specific details of the person as outlined in the detail of this section. The warrant may be executed by any

member of the Garda Síochána in any part of the State even if it is not in the possession of the member at the time. However, the warrant must be shown to, and a copy given to, the person arrested, if not at the time of arrest, within 24 hours thereafter.

A person arrested under a warrant must be brought before the High Court as soon as possible and the High Court must remand the person in custody pending the production of the Minister's certificate. If a certificate is not produced within 18 days the person must be released. The release of any person will not prejudice his re-arrest if a request for the enforcement of the penalty or detention order is afterwards made.

Section 9 — Execution of sentence imposed in sentencing country

This section provides that where a person is before the High Court following arrest on foot of a warrant issued under *sections 7 or 8*, the Court may make an order committing the person to a prison or Saint Patrick's Institution. Before making the order, the High Court must be satisfied that—

- (a) the Minister has given his consent to the request from the sentencing state,
- (b) the person is an Irish citizen (or has close ties),
- (c) the order imposing the sentence is final,
- (d) the offence under the law of the sentencing country corresponds to an offence under the law of the State.

The effect of the order is to authorise the continued enforcement by the State of the sentence concerned imposed by the sentencing state. The Minister may however make an application to the court to adapt the duration of the sentence to conform with our law if the sentence imposed by the sentencing state is greater than the maximum term of imprisonment to which the person would be liable if he/she were to commit a similar offence in the State. The section also provides that, other than in its duration, the sentence to be served in Ireland must not be less favourable to the sentenced person.

This section also contains provisions in relation to release from detention where the Irish authorities are notified by the sentencing state that the person need no longer be detained. Such a release is subject to certain conditions, in particular that his/her continued detention in Ireland is no longer required as a result of a sentence imposed in respect of another offence or that the person has not been remanded in custody in respect of an offence in Ireland.

Section 10 — Criminal Procedure Act 1993 disapplied

This section provides that the Criminal Procedure Act 1993 shall not apply to a person in respect of whom a committal order is issued under the previous section. (The Criminal Procedure Act 1993 provides for judicial review of certain convictions and sentences, for presentation of petitions for the grant of pardon on the grounds of miscarriage of justice, and for payment of compensation by the State to or in respect of persons convicted as a result of a miscarriage of justice.)

Section 11 — Prohibition on certain proceedings

This section provides that no proceedings under section 3 of the Criminal Law (Jurisdiction) Act 1976 will be taken against a person in respect of whom a committal order is issued under section 9. (S.3 of the 1976 Act provides that a person who escapes from any lawful custody in which he or she is held in Northern Ireland shall be guilty of an offence.)

Section 12 — Expenses

This section provides that any expenses arising from the enactment of the Bill will be provided for out of moneys provided by the Oireachtas.

Section 13 — Short title and commencement

This section provides for the short title and commencement date of the Act.

Financial Implications

The new arrangements being introduced by this Bill are expected to give rise to some increase in the administrative workload of the Department of Justice Equality and Law Reform, the Attorney General's Office and the Chief State Solicitor's Office. There is likely to be a small increase in the number of prisoners in Irish jails. It is not possible to quantify the increase in costs but they are not likely to be significant.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Nollaig, 2003.*