



# **DÁIL ÉIREANN**

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**AN BILLE UM CHEARTAS COIRIÚIL (AITHEANTAS  
FRITHPHÁIRTEACH DO PHIANBHREITHEANNA  
COIMEÁDTA), 2021**

**CRIMINAL JUSTICE (MUTUAL RECOGNITION OF  
CUSTODIAL SENTENCES) BILL 2021**

**LEASUITHE TUARASCÁLA  
REPORT AMENDMENTS**

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## AN BILLE UM CHEARTAS COIRIÚIL (AITHEANTAS FRITHPHÁIRTEACH DO PHIANBHREITHEANNA COIMEÁDTA), 2021 —AN TUARASCÁIL

### CRIMINAL JUSTICE (MUTUAL RECOGNITION OF CUSTODIAL SENTENCES) BILL 2021 —REPORT

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#### *Leasuithe Amendments*

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1. In page 5, line 16, after “enactments;” to insert the following:

“to confer a power on the Minister for Justice to direct the conditional release of certain persons serving sentences of imprisonment or persons being detained in a place provided under section 2 of the Prisons Act 1970 and, for that purpose, to amend the Criminal Justice Act 1960 and other enactments; to amend and extend the Transfer of Sentenced Persons Act 1995; to amend and extend the Transfer of Execution of Sentences Act 2005; to make provision for matters to which the Parole Board shall have regard in deciding whether to make a parole order in respect of a parole applicant upon whom a sentence was imposed by a court or tribunal in a state, other than the State, the enforcement of which has been transferred to the State and, for that and other purposes, to amend the Parole Act 2019; to give further effect to Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention; for that purpose to amend the Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020;”.

—An tAire Dlí agus Cirt.

2. In page 5, between lines 24 and 25, to insert the following:

“(3) The Transfer of Sentenced Persons Acts 1995 and 1997 and *Part 5\** may be cited together as the Transfer of Sentenced Persons Acts 1995 to 2023.”.

—An tAire Dlí agus Cirt.

[\**This is a reference to a Part proposed to be inserted by amendment No. 59.*]

3. In page 6, between lines 2 and 3, to insert the following:

“ “Act of 1960” means the Criminal Justice Act 1960;

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

—An tAire Dlí agus Cirt.

4. In page 6, between lines 3 and 4, to insert the following:

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

—An tAire Dlí agus Cirt.

5. In page 7, line 15, after “Union,” to insert “and”.

—An tAire Dlí agus Cirt.

6. In page 7, to delete lines 16 to 20.

—An tAire Dlí agus Cirt.

7. In page 7, line 25, to delete “and” and substitute “or”.

—An tAire Dlí agus Cirt.

8. In page 8, line 6, to delete “criminal proceedings;” and substitute the following:

“criminal proceedings and includes a punishment or measure that includes a limited or unlimited period of time that is served otherwise than in custody but does not include a part of a sentence the execution of which has been conditionally suspended upon its imposition—

(a) where *Part 2* applies, by a court in the State, and

(b) where *Part 3* applies, by a court in an issuing state;”.

—An tAire Dlí agus Cirt.

9. In page 8, line 10, to delete “this Act” and substitute “*Part 2* or *3*, as the case may be,”.

—An tAire Dlí agus Cirt.

10. In page 8, line 12, to delete “this Act” and substitute “*Part 2* or *3*”.

—An tAire Dlí agus Cirt.

11. In page 9, lines 3 and 4, to delete “this Act” and substitute “*Part 2* or *3* or *section 52*”.

—An tAire Dlí agus Cirt.

12. In page 9, lines 8 and 9, to delete “this Act” and substitute “*Part 2* or *3* or *section 52*”.

—An tAire Dlí agus Cirt.

13. In page 9, line 14, to delete “this Act” and substitute “*Part 2* or *3* or *section 52*”.

—An tAire Dlí agus Cirt.

14. In page 9, line 28, to delete “this Act” and substitute “*Parts 1* to *3* and *section 52*”.

—An tAire Dlí agus Cirt.

15. In page 9, line 35, to delete “Minister of Public Expenditure and Reform” and substitute “Minister for Public Expenditure, National Development Plan Delivery and Reform”.

—An tAire Dlí agus Cirt.

16. In page 11, after line 40, to insert the following:

“(3) The Minister shall, at the request of the competent authority of an executing state, make all reasonable efforts to provide such information in connection with the transfer to the executing state of the sentenced person as may be specified in the request to—

- (a) the sentenced person, or
- (b) where *section 12(3)* applies, to the legal representative of the sentenced person, or any other person considered by the Minister to be an appropriate person for the purpose of that section.”.

—An tAire Dlí agus Cirt.

17. In page 14, between lines 5 and 6, to insert the following:

“(d) the Minister is satisfied that reasonable steps have been taken to inform the sentenced person in writing in a language that he or she understands of the substance of the arrangements in accordance with which it is proposed to transfer him or her,”.

—An tAire Dlí agus Cirt.

18. In page 16, line 29, to delete “Act” and substitute “Part”.

—An tAire Dlí agus Cirt.

19. In page 17, line 29, to delete “Act” and substitute “Part”.

—An tAire Dlí agus Cirt.

20. In page 17, between lines 34 and 35, to insert the following:

“(5) Where, before the coming into operation of *section 53\**, a warrant was issued in respect of a person under section 45B of the Act of 2003, a reference in this section to the order by virtue of which he or she is required to be detained at the time a warrant is issued shall include a reference to an order referred to in section 45B of the Act of 2003 prior to such coming into operation.”.

—An tAire Dlí agus Cirt.

[\*This is a reference to a section proposed to be inserted by amendment No. 62.]

21. In page 26, line 8, after “bail” to insert “for a period not exceeding 18 days”.

—An tAire Dlí agus Cirt.

22. In page 26, line 12, after “custody” to insert “or the terms of his or her bail”.

—An tAire Dlí agus Cirt.

23. In page 26, line 33, after “sentence” to insert “(in its legal nature and duration)”.

—An tAire Dlí agus Cirt.

24. In page 30, line 29, after “(5)” to insert “or both”.

—An tAire Dlí agus Cirt.

25. In page 30, to delete lines 30 to 32 and substitute the following:

“(2) An application under *subsection (1)* may be made *ex parte* other than where—

(a) the sentenced person is in the State, or

(b) the appropriate court directs that it is in the interests of justice that it be made on notice to the sentenced person.”.

—An tAire Dlí agus Cirt.

26. In page 30, line 33, to delete “by the” and substitute “in the”.

—An tAire Dlí agus Cirt.

27. In page 30, line 38, to delete “by” and substitute “in”.

—An tAire Dlí agus Cirt.

28. In page 31, line 3, to delete “by the” and substitute “in the”.

—An tAire Dlí agus Cirt.

29. In page 31, to delete lines 7 to 17 and substitute the following:

“(6) The duration of a sentence adapted under *subsection (5)* shall, as far as practicable, correspond to the duration of the sentence imposed in the issuing state and shall not, in any event, either—

(a) aggravate it, or

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

—An tAire Dlí agus Cirt.

30. In page 31, to delete lines 25 to 38 and substitute the following:

“(9) A sentence shall not be taken by its legal nature to be incompatible with the law of the State by reason only of—

(a) the duration of the sentence imposed in an issuing state,

(b) any provisions of law of the issuing state in respect of early or conditional release which applied to the sentence prior to the transfer of its enforcement to the State,

(c) any provisions of law of the issuing state, other than the provisions referred to in *paragraph (b)*, under which the sentenced person would be entitled to be released from custody, whether under licence or otherwise, at a specified time having served a portion of the sentence,

- (d) in the case of a sentence of imprisonment for life—
    - (i) any restriction for the whole term of the sentence regarding the eligibility of the sentenced person to early or conditional release (including parole), or
    - (ii) any condition that means that the eligibility of the sentenced person to early or conditional release (including parole) was conditional on his or her having served a specified term of imprisonment as a result of—
      - (I) a decision or order by the court or tribunal that imposed the sentence,
      - (II) the operation of law of the issuing state, or
      - (III) a decision of a body in the issuing state, other than a body referred to in *clause (I)*, on whom a power to make such a decision has been conferred by law,
  - or
  - (e) its imposition in the issuing state in respect of more than one offence.
- (10) In this section, “incompatible with the law of the State” means—
- (a) in so far as it applies to the legal nature of a sentence imposed in an issuing state, a sentence that, subject to *subsection (9)*, consists of a punishment or measure that is different in nature from the punishment or measure which could be imposed on the sentenced person if he or she were—
    - (i) convicted in the State of an offence corresponding to the offence of which he or she was convicted in the issuing state, or
    - (ii) the subject of a special verdict under section 5 of the Act of 2006,
  - and
  - (b) in so far as it applies to the duration of a sentence imposed in an issuing state, a sentence that is greater than the maximum term of imprisonment or other detention to which the sentenced person would be liable if he or she were convicted in the State of an offence corresponding to the offence of which he or she was convicted in the issuing state.”.

—An tAire Dlí agus Cirt.

**31.** In page 33, to delete line 15 and substitute the following:

- “(3) An application under *subsection (2)* shall—
- (a) be brought by the Minister after a sentenced person is arrested under warrant issued under *section 42(1)(a)*, or brought into the State under a warrant issued under *section 42(1)(b)*, as the case may be, and
  - (b) be made on notice to the sentenced person.”.

—An tAire Dlí agus Cirt.

32. In page 33, line 16, after “Where” to insert “, for any reason,”.  
—An tAire Dlí agus Cirt.
33. In page 33, lines 18 to 20, to delete all words from and including “and” in line 18 down to and including “period” in line 20.  
—An tAire Dlí agus Cirt.
34. In page 33, line 26, to delete “*and section 40(6)*”.  
—An tAire Dlí agus Cirt.
35. In page 33, line 28, after “concerned” to insert “(including where the sentence is adapted in accordance with *section 40(3)* or *(5)* or both)”.  
—An tAire Dlí agus Cirt.
36. In page 33, line 34, after “sentence” to insert “(including where the sentence is adapted in accordance with *section 40(3)* or *(5)* or both)”.  
—An tAire Dlí agus Cirt.
37. In page 33, line 39, after “release,” to insert “and”.  
—An tAire Dlí agus Cirt.
38. In page 34, to delete lines 1 to 4.  
—An tAire Dlí agus Cirt.
39. In page 34, line 5, to delete “without prejudice to the generality of *paragraph (a)* or *(b)*,”.  
—An tAire Dlí agus Cirt.
40. In page 34, line 6, after “entitled” to insert “, other than in accordance with *paragraph (a)*,”.  
—An tAire Dlí agus Cirt.
41. In page 34, line 10, to delete “, and not the legal nature or duration,”.  
—An tAire Dlí agus Cirt.
42. In page 34, between lines 12 and 13, to insert the following:  
“(8) Where a committal order is made in respect of a sentenced person who has been sentenced to a term of imprisonment for life in an issuing state, the order shall specify that the person is to be committed for imprisonment for life irrespective of whether his or her eligibility for early or conditional release (including parole) in the issuing state was—  
(a) restricted for the whole term of the sentence, or  
(b) conditional on his or her having served a specified term of imprisonment as a result of—  
(i) a decision or order by the court or tribunal that imposed the sentence,  
(ii) the operation of law of the issuing state, or



- (iii) a decision of a body in the issuing state, other than a body referred to in *subparagraph (i)*, on whom a power to make such a decision has been conferred by law.”.

—An tAire Dlí agus Cirt.

43. In page 34, line 19, to delete “by the State of a sentence imposed by” and substitute “in the State of a sentence (in its legal nature and duration) imposed in”.

—An tAire Dlí agus Cirt.

44. In page 34, lines 38 and 39, to delete “Criminal Justice Act 1960” and substitute “Act of 1960 or be released for such period as may be specified by the Minister under section 2A of that Act”.

—An tAire Dlí agus Cirt.

45. In page 35, line 2, to delete “or”, where it secondly occurs, and substitute “and”.

—An tAire Dlí agus Cirt.

46. In page 35, to delete lines 8 and 9 and substitute the following:

“(4) The Criminal Procedure Act 1993 shall not apply to a person in respect of whom an order under *section 43(1)* has been made, a warrant is issued under *section 42(1)(a)* or *(b)* or a committal order is made in so far as the conviction or sentence imposed in the issuing state is concerned.”.

—An tAire Dlí agus Cirt.

47. In page 35, line 26, after “time” to insert “(including as part of an application under *section 40*)”.

—An tAire Dlí agus Cirt.

48. In page 35, line 34, to delete “this” and substitute “the Framework Decision and this”.

—An tAire Dlí agus Cirt.

49. In page 38, line 14, after “warrant,” to insert “and”.

—An tAire Dlí agus Cirt.

50. In page 38, line 18, to delete “in the State”.

—An tAire Dlí agus Cirt.

51. In page 38, line 23, after “sentence” to insert “in the State”.

—An tAire Dlí agus Cirt.

52. In page 38, lines 37 and 38, to delete “within such time” and substitute “from such date”.

—An tAire Dlí agus Cirt.

53. In page 39, lines 3 and 4, to delete “within such time” and substitute “from such date”.

—An tAire Dlí agus Cirt.

54. In page 39, to delete lines 5 and 6 and substitute the following:

“(2) Where *paragraph (a) or (b) of subsection (1) applies* or the Minister receives a notification under *paragraph (c) of that subsection*, the Minister shall immediately inform the following persons of the application of the paragraph concerned or the decision or measure referred to in the notification, as the case may be—”.

—An tAire Dlí agus Cirt.

55. In page 39, lines 14 and 15, to delete “*paragraph (a), (b) or (c) of subsection (1) applies*” and substitute “*paragraph (a) or (b) applies* or that a notification under *paragraph (c) of that subsection* has been received”.

—An tAire Dlí agus Cirt.

56. In page 39, line 16, to delete “and from such later date as may be specified in a” and substitute “such later date as may be specified in the”.

—An tAire Dlí agus Cirt.

57. In page 39, line 18, to delete “*Subsection (2)*” and substitute “*Subsection (3)*”.

—An tAire Dlí agus Cirt.

58. In page 40, between lines 25 and 26, to insert the following:

#### “PART 4

#### CONDITIONAL RELEASE

#### **Amendment of section 1 of Act of 1960**

51. Section 1 of the Act of 1960 is amended by the insertion of the following definitions:

“ ‘Act of 1995’ means the Transfer of Sentenced Persons Act 1995;

‘Act of 2005’ means the Transfer of Execution of Sentences Act 2005;

‘*Act of 2023*’ means the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*;

‘conditional release’, other than in the definition of ‘release provision’, has the meaning assigned to it by section 2A(4);

‘foreign sentence’ means a sentence imposed by a court or tribunal in a sentencing state, the enforcement of which is transferred to the State and thereafter continued in accordance with a committal order within the meaning of the Act of 1995, the Act of 2005 or *Part 3 of the Act of 2023*, as the case may be;

‘release provision’, in relation to a foreign sentence, means a measure in respect of early or conditional release that the sentencing state has indicated applied to the foreign sentence prior to the transfer of its enforcement to the State;

‘sentencing state’, in relation to a foreign sentence, means a state, other than the State, in which the foreign sentence was imposed on a person;”.

**Amendment of section 2 of Act of 1960**

**52.** Section 2 of the Act of 1960 is amended—

- (a) in subsection (2)(g), by the insertion of “or section 2A” after “this section”, and
- (b) in subsection (11), by the insertion of “and sections 2A and 2B” after “this section”.

**Conditional release of persons from prisons and related matters**

**53.** The Act of 1960 is amended by the insertion of the following sections after section 2:

**“Conditional release of persons from prisons**

**2A.** (1) Subject to subsection (2), this section applies to a person serving a foreign sentence in relation to which a release provision applies.

(2) This section shall not apply to a person serving a sentence of imprisonment for life.

(3) This section shall apply to a person regardless of whether the foreign sentence being served by the person was imposed prior to or after the coming into operation of *section 51\** of the *Act of 2023*.

(4) Subject to subsection (6) and other than where subsection (5) applies, the Minister shall, for the purpose of avoiding the loss of benefit of the release provision referred to in subsection (1), direct that such person as is specified in the direction be released (in this Act referred to as ‘conditional release’) from prison for, subject to section 2B, such period, and subject to such conditions, as may be specified in the direction or rules under section 2D applying to that person.

(5) This subsection applies where the Minister is of the opinion that, for reasons connected with any one or more of the following matters, it would not be appropriate to give a direction under this section:

(a) the likelihood that the person would not have been released, in accordance with the release provision, from custody in the sentencing state (whether subject to conditions or otherwise) had the enforcement of the foreign sentence not transferred to the State;

(b) the nature and gravity of the offence to which the sentence of imprisonment being served by the person relates;

(c) the sentence of imprisonment concerned and any recommendations of the court that imposed that sentence in relation thereto;

(d) the period of the sentence of imprisonment served by the person;

(e) the effect of any order adapting the sentence under section 7C(3) or

- (5) of the Act of 1995, 10B(3) or (5) of the Act of 2005 or 40(3) or (5) of the *Act of 2023* or partial recognition and enforcement (within the meaning of *Part 3* of the *Act of 2023*) of the sentence;
- (f) the potential threat to the safety and security of members of the public (including the victim of the offence to which the sentence of imprisonment being served by the person relates) should the person be released from prison;
  - (g) any offence of which the person was convicted before being convicted of the offence to which the sentence of imprisonment being served by him or her relates;
  - (h) the risk of the person failing to return to prison upon the expiration of any period of conditional release;
  - (i) the conduct of the person while in custody, while previously the subject of a direction under section 2 or this section or while previously released on parole (within the meaning of the Parole Act 2019);
  - (j) any report of, or recommendation made by—
    - (i) the governor of, or person for the time being performing the functions of governor in relation to, the prison concerned,
    - (ii) the Garda Síochána,
    - (iii) a probation officer,
    - (iv) the sentencing state, or
    - (v) any other person whom the Minister considers would be of assistance in enabling him or her to make a decision as to whether to give a direction under this section that relates to the person concerned;
  - (k) the risk of the person committing an offence during any period of conditional release;
  - (l) the risk of the person failing to comply with any conditions attaching to his or her conditional release;
  - (m) the likelihood that any period of conditional release might not accelerate the person's social rehabilitation and reintegration into society or improve his or her prospects of obtaining employment.
- (6) The Minister shall not give a direction under this section in respect of a person—
- (a) to whom section 24(1)(b) of the Parole Act 2019 applies, if that person has been released on parole pursuant to a parole order (within the meaning of the Parole Act 2019), or
  - (b) where the person has been charged with, or convicted of, an

offence and is in custody pursuant to an order of a court remanding him or her to appear at a future sitting of a court.

- (7) The Minister shall in a timely manner decide whether to give a direction under this section.
- (8) Where the Minister refuses to give a direction under this section, he or she shall, unless a direction is subsequently given, review the refusal at intervals (which are not greater than 2 years).
- (9) A direction under this section shall be given to the governor of, or person for the time being performing the functions of governor in relation to, the prison concerned.
- (10) The governor of, or person for the time being performing the functions of governor in relation to, the prison concerned to whom a direction under this section is given shall comply with that direction, and shall make and keep a record in writing of that direction.
- (11) The giving of a direction under this section in respect of a person shall not confer an entitlement on him or her to such further direction.
- (12) Nothing in this section shall affect—
  - (a) the power conferred by section 23 of the Criminal Justice Act 1951 to commute or to remit punishment,
  - (b) the rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct,
  - (c) the power of the Minister to give a direction that a person be released for a temporary period under section 2 (including that section as applied by section 4 of the Prisons Act 1970),
  - (d) the operation of the Criminal Justice (Release of Prisoners) Act 1998,
  - (e) the operation of section 108 of the Criminal Justice Act 2006, and
  - (f) the operation of the Parole Act 2019 in respect of a person who is eligible for parole in accordance with section 24(1)(b) of that Act.
- (13) In this section, ‘probation officer’ means a person appointed by the Minister to be a probation officer.

#### **Period of conditional release**

- 2B.** (1) The Minister may, in specifying a period of conditional release in a direction under section 2A, specify such period as he or she considers appropriate having regard to—
- (a) the purpose of avoiding the loss of the benefit of the release provision in relation to a foreign sentence being served by a person,
  - (b) the desirability of specifying a period that is not in excess of the maximum period of release under the release provision applied *pro*

*rata* to the portion of the foreign sentence served in the sentencing state, and

- (c) any reduction in the time to be served in prison that has already been applied in respect of the release provision upon the making of a committal order (within the meaning of the Act of 1995, the Act of 2005 or *Part 3* of the *Act of 2023*, as the case may be) in relation to the foreign sentence.
- (2) The Minister may adjust, in accordance with such rules under section 2D as may apply, the period of conditional release to be specified in a direction under section 2A to avoid the accrual of both of the following benefits to the person in respect of whom the direction is to be made—
- (a) the calculation, after the transfer to the State of the enforcement of the foreign sentence, of the period of conditional release on the basis of the *pro rata* application of the release provision in relation to the foreign sentence to the portion of that sentence served in the sentencing state, and
  - (b) the accrual to him or her while on conditional release of the benefit of the application of the rules and practice whereby prisoners generally may earn remission of sentence by industry and good conduct.

#### **Variation of conditional release**

- 2C.** (1) The Minister may at any time vary a condition specified in a direction under section 2A whether by the alteration, addition or revocation of the condition.
- (2) A variation under subsection (1) by the Minister of a condition specified in a direction under section 2A shall—
- (a) be in writing,
  - (b) specify the date from which the variation shall take effect,
  - (c) include reasons for the decisions, and
  - (d) not include, other than to the extent the Minister considers it necessary, any information that identifies, or could identify, a relevant victim or his or her place of residence.
- (3) Where the Minister varies a condition specified in a direction under section 2A, the variation shall—
- (a) take effect from the date specified, and
  - (b) have effect from that date as a condition of the direction.

#### **Rules relating to conditional release**

- 2D.** (1) The Minister may make rules for the purpose of enabling sections 2A, 2B and 2C to have full effect and, without prejudice to the generality

of the foregoing, such rules may—

- (a) specify conditions to which all persons released pursuant to a direction under section 2A shall be subject or conditions to which all persons belonging to such classes of persons as are specified in the rules shall be subject,
  - (b) for the purposes of section 2B(1)(b), specify the method to be employed for—
    - (i) calculating a maximum period of release under a release provision, and
    - (ii) applying the period referred to in subparagraph (i) *pro rata* to a portion of a foreign sentence served in the sentencing state,
  - (c) for the purposes of section 2B(2), specify the method to be employed for calculating the adjustment (if any) of a period of conditional release for the purpose specified in that provision,
  - (d) for the purpose of section 2C, specify the procedure for the variation of a condition specified in a direction under section 2A, and
  - (e) contain such incidental, supplementary and consequential provisions as the Minister considers to be necessary or expedient for the purpose of enabling those sections to have full force and effect.
- (2) Every rule under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the rule is passed by either such House within the next 21 days on which that House has sat after the rule is laid before it, the rule shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.”.

#### **Amendment of section 4 of Act of 1960**

**54.** Section 4 of the Act of 1960 is amended—

- (a) in subsection (1), by the substitution of “section 2, 2A or 3” for “section 2 or section 3”,
  - (b) by the insertion of the following subsection after subsection (1):

“(1A) Where the Minister, under section 2C(1), varies a condition specified in a direction under section 2A, he or she shall, as soon as practicable after the variation, provide a copy of the variation to the person specified in the direction.”,
- and
- (c) in subsection (2), by the insertion of “or conditionally released under section 2A” after “section 3”.

**Amendment of section 5 of Act of 1960**

- 55.** Section 5 of the Act of 1960 is amended, by the insertion of “or conditionally released under section 2A” after “section 3”.

**Amendment of section 6 of Act of 1960**

- 56.** Section 6 of the Act of 1960 is amended—

(a) in subsection (1)—

(i) by the insertion of “or conditionally released under section 2A” after “section 3”, and

(ii) in paragraph (a), by the insertion of “or conditionally released, as the case may be,” after “temporarily released”,

and

(b) in subsection (3)—

(i) by the substitution of “section 2, 2A or 3” for “section 2 or section 3”, and

(ii) by the insertion of “or conditionally released, as the case may be,” after “temporarily released”.

—An tAire Dlí agus Cirt.

[\*This is a reference to a section proposed to be inserted by amendment No. 58.]

- 59.** In page 40, between lines 25 and 26, to insert the following:

**“PART 5**

**AMENDMENT OF ACT OF 1995**

**Amendment of section 1 of Act of 1995**

- 57.** Section 1 of the Act of 1995 is amended—

(a) in subsection (1)—

(i) in the definition of “sentence” by the substitution of “a criminal offence and includes a punishment or measure that includes a limited or unlimited period of time that is served otherwise than in custody” for “the commission of an offence”, and

(ii) by the insertion of the following definitions:

“ ‘Act of 2006’ means the Criminal Law (Insanity) Act 2006;

‘children detention school’ has the same meaning as it has in section 3(1) of the Children Act 2001;

‘committal order’ has the meaning assigned to it by section 7A(1);



‘deductible period’, in relation to a sentenced person, means—

- (a) the period spent by the person in custody in the State on foot of a warrant issued under section 7(2) awaiting the making of a committal order, and
- (b) the period (if any) of the sentence indicated by a sentencing state to be deducted from the total length of the sentence—
  - (i) in respect of an amnesty, pardon, clemency or other such decision granted by the sentencing state in relation to the sentence, and
  - (ii) in respect of any other reduction (including a period of remission of sentence) in relation to the part of the sentence which has been served by the person in that state;

‘designated centre’ has the same meaning as it has in section 1 of the Act of 2006;

‘place of detention’ means—

- (a) a prison,
- (b) a designated centre, or
- (c) a children detention school;

‘prison’ means a place of custody (other than a Garda Síochána station) administered by or on behalf of the Minister and includes a place—

- (a) provided under section 2 of the Prisons Act 1970, and
- (b) specified under section 3 of the Prisons Act 1972;”,

and

- (b) by the insertion of the following subsection after subsection (2):

“(3) For the purposes of this Act, an offence under the law of the sentencing state corresponds to an offence under the law of the State where the act or omission constituting the offence under the law of the sentencing state would, if committed in the State, constitute an offence under the law of the State.”.

#### **Amendment of section 4 of Act of 1995**

- 58.** Section 4 of the Act of 1995 is amended by the insertion of the following subsection after subsection (5):

“(6) The Minister may, before granting an application under subsection (1), invite or otherwise take into account submissions by the sentenced person, the administering state and such persons as the Minister considers appropriate.”.

#### **Amendment of section 5 of Act of 1995**

**59.** Section 5 of the Act of 1995 is amended by the substitution of the following subsection for subsection (2):

“(2) A warrant issued under subsection (1) shall authorise—

(a) the taking of the sentenced person to a place in any part of the State for the purposes of delivery referred to in paragraph (b),

(b) the delivery of the sentenced person into the custody of a person authorised by the administering state to receive the person—

(i) at a place of departure from the State, for conveyance to the administering state and the keeping of the person in custody until the delivery is effected, or

(ii) at a place of entry to the administering state and the keeping of the person in custody until the delivery is effected,

and

(c) the removal of the sentenced person from the State—

(i) where paragraph (b)(i) applies, by the person to whom he or she is so delivered at the place of departure from the State, and

(ii) where paragraph (b)(ii) applies, by a person authorised pursuant to subsection (4) for that purpose.”.

#### **Amendment of section 6 of Act of 1995**

**60.** Section 6 of the Act of 1995 is amended—

(a) in subsection (3)—

(i) in paragraph (a), by the substitution of “the Minister” for “it”, and

(ii) by the substitution of the following paragraph for paragraph (e):

“(e) the offence under the law of the sentencing state in respect of which the sentence was imposed corresponds to an offence under the law of the State.”,

and

(b) by the insertion of the following subsection after subsection (3):

“(3A) For the purposes of subsection (3)(e), where the sentence imposed in a sentencing state is in relation to more than one offence, the requirement set out in that provision shall be deemed to be satisfied where any one or more of the offences for which the sentence was imposed corresponds to an offence under the law of the State.”.

## **Amendment of section 7 of Act of 1995**

**61.** Section 7 of the Act of 1995 is amended—

- (a) in subsection (1), by the substitution of “the continued enforcement of the sentence (in its legal nature and duration) and the issue of a warrant under subsection (2)” 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”,
  - (b) in subsection (2), by the substitution of “for the purpose of enforcement of the sentence 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, a place of detention to await the making of a committal order” for “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”,
  - (c) by the substitution of the following subsection for subsection (3):
    - “(3) Where the High Court issues a warrant under subsection (2), the court shall take all such measures as are necessary to enforce the sentence and, in particular, may make an order under section 7C(3) or (5), or both adapting the sentence.”,
- and
- (d) by the repeal of subsections (4) to (10).

## **Committal order and related matters**

**62.** The Act of 1995 is amended by the insertion of the following sections after section 7:

### **“Committal order**

- 7A.** (1) Subject to subsection (3), the High Court shall, on application by or on behalf of the Minister, in respect of a sentenced person brought into the State under a warrant issued under section 7(2), make an order (in this Act referred to as a ‘committal order’) not later than 21 days after the sentenced person is brought into the State, for the purpose of enforcement of the sentence, committing the person to a place of detention.
- (2) An application under this section shall—
    - (a) be brought by the Minister after a sentenced person is brought into the State under a warrant issued under section 7(2), and
    - (b) be made on notice to the sentenced person.
  - (3) Where, for any reason, the High Court is unable to make a committal order within the period referred to in subsection (1), the period may be extended by such reasonable period as may be required by the court

for that purpose.

- (4) A sentenced person may continue to be detained or otherwise restricted in his or her personal liberty pursuant to a warrant issued under section 7(2) notwithstanding that the period referred to in subsection (1) is extended under subsection (3).
- (5) The period for which a sentenced person may be committed to a place of detention in a committal order shall, subject to subsection (6), be a period equal to the period of the sentence (including where the sentence is adapted in accordance with section 7C(3) or (5) or both) less—
  - (a) the period of the sentence actually served by the person in the sentencing state, and
  - (b) the deductible period.
- (6) In determining the period for which a sentenced person may be committed to a place of detention in a committal order—
  - (a) the High Court shall not have regard to the provisions of law of the sentencing state under which the sentenced person is entitled to early or conditional release, and
  - (b) where by operation of law of the sentencing state the sentenced person would be entitled, other than in accordance with paragraph (a), to be released from custody, whether under licence or otherwise, at a specified time having served a specified portion of the sentence—
    - (i) the High Court shall treat such release as a measure relating to the administration of the sentence, and
    - (ii) the sentence shall be treated as a sentence to be spent in custody or other detention for the full period.
- (7) Where a committal order is made in respect of a sentenced person who has been sentenced to a term of imprisonment for life in a sentencing state, the order shall specify that the person is to be committed for imprisonment for life irrespective of whether his or her eligibility for early or conditional release (including parole) in the sentencing state was—
  - (a) restricted for the whole term of the sentence, or
  - (b) conditional on his or her having served a specified term of imprisonment as a result of—
    - (i) a decision or order by the court or tribunal that imposed the sentence,
    - (ii) the operation of law of the sentencing state, or

- (iii) a decision of a body in the sentencing state, other than a body referred to in subparagraph (i), on whom a power to make such a decision has been conferred by law.
- (8) Notwithstanding subsection (5), the period for which a sentenced person may be committed to a place of detention in a committal order may exceed the period for which he or she could lawfully have been detained or otherwise had his or her personal liberty restricted in custody in the sentencing state.

**Effect of committal order**

- 7B.** (1) Subject to subsections (3) and (4) and section 7C, the effect of a committal order shall be to authorise the continued enforcement by the State of a sentence (in its legal nature and duration) imposed in a sentencing state and such an order shall—
- (a) where a sentenced person is to be committed to a prison, have the same force and effect as an order imposing a sentence of imprisonment following conviction by the court,
  - (b) where a sentenced person is to be committed to a designated centre, have the same force and effect as an order by the court under section 5(2) of the Act of 2006 committing a person to such a centre, and
  - (c) where a sentenced person is to be committed to a children detention school, have the same force and effect as an order imposing a sentence of detention in a children detention school following conviction by the court.
- (2) Without prejudice to the generality of subsection (1), the following shall apply in relation to a sentence which is to be enforced in the State—
- (a) section 17(3) of the Criminal Justice Administration Act 1914 in respect of a sentenced person committed to a prison,
  - (b) the power to commute or remit a punishment under section 23 of the Criminal Justice Act 1951,
  - (c) the power of the Minister to give a direction that a sentenced person be released from prison for a temporary period under section 2 of the Criminal Justice Act 1960 or be released for such period as may be specified by the Minister under section 2A of that Act,
  - (d) the power of the Parole Board to make a parole order under section 27 of the Parole Act 2019 in respect of a sentenced person, and
  - (e) in so far as the period served by a sentenced person in a place of detention on foot of a warrant issued under section 7(2) and a

committal order is concerned, the rules or practice whereby sentenced persons generally may earn remission of sentences by industry or good conduct.

- (3) A person in respect of whom a warrant is issued under section 7(2) or a committal order is made shall not be entitled to bring any appeal in the State against the conviction or the sentence imposed in the sentencing state.
- (4) The Criminal Procedure Act 1993 shall not apply to a person in respect of whom a warrant is issued under section 7(2) or a committal order is made in so far as the conviction or sentence imposed in the sentencing state is concerned.

### **Adaptation**

- 7C.** (1) The High Court may, on the application by or on behalf of the Minister (whether as part of an application under section 7 or 7A or at any other time) or of its own motion, make an order under subsection (3) or (5) or both adapting a sentence.
- (2) An application under subsection (1) may be made *ex parte* other than where—
    - (a) the sentenced person is in the State, or
    - (b) the High Court directs that it is in the interests of justice that it be made on notice to the sentenced person.
  - (3) Where the sentence imposed in the sentencing state is by its legal nature incompatible with the law of the State, the High Court may make an order adapting the legal nature of the sentence to that of a sentence prescribed by the law of the State for an offence similar to the offence for which the sentence was imposed.
  - (4) The legal nature of a sentence adapted under subsection (3) shall, as far as practicable, correspond to the legal nature of the sentence concerned imposed in the sentencing state and shall not, in any event, either—
    - (a) aggravate it, or
    - (b) exceed the maximum penalty prescribed by the law of the State for a similar offence.
  - (5) Where the sentence imposed in the sentencing state is by its duration incompatible with the law of the State, the High Court may make an order adapting the duration of the sentence to that of a sentence prescribed by the law of the State for an offence similar to the offence for which the sentence was imposed.
  - (6) The duration of a sentence adapted under subsection (5) shall, as far as practicable, correspond to the duration of the sentence imposed in the sentencing state and shall not, in any event, either—

- (a) aggravate it, or
  - (b) exceed the maximum penalty prescribed by the law of the State for a similar offence.
- (7) The enforcement of a sentence that is, by its legal nature or duration, incompatible with the law of the State shall not be deemed to be unlawful by reason only of the sentence not having been adapted by way of an order under subsection (3) or (5) or both.
- (8) A sentenced person may continue to be detained or otherwise restricted in his or her personal liberty pursuant to a warrant issued under section 7(2) or a committal order notwithstanding that an application is made under subsection (1) for an order under subsection (3) or (5) or both adapting his or her sentence.
- (9) A sentence shall not be taken by its legal nature to be incompatible with the law of the State by reason only of—
- (a) the duration of the sentence imposed in a sentencing state,
  - (b) any provisions of law of the sentencing state in respect of early or conditional release which applied to the sentence prior to the transfer of its enforcement to the State,
  - (c) any provisions of law of the sentencing state, other than the provisions referred to in paragraph (b), under which the sentenced person would be entitled to be released from custody, whether under licence or otherwise, at a specified time having served a portion of the sentence,
  - (d) in the case of a sentence of imprisonment for life—
    - (i) any restriction for the whole term of the sentence regarding the eligibility of the sentenced person to early or conditional release (including parole), or
    - (ii) any condition that means that the eligibility of the sentenced person to early or conditional release (including parole) was conditional on his or her having served a specified term of imprisonment as a result of—
      - (I) a decision or order by the court or tribunal that imposed the sentence,
      - (II) the operation of law of the sentencing state, or
      - (III) a decision of a body in the sentencing state, other than a body referred to in clause (I), on whom a power to make such a decision has been conferred by law,
- or
- (e) its imposition in the sentencing state in respect of more than one

offence.

(10) In this section, ‘incompatible with the law of the State’ means—

(a) in so far as it applies to the legal nature of a sentence imposed in a sentencing state, a sentence that, subject to subsection (9), consists of a punishment or measure that is different in nature from the punishment or measure which could be imposed on the sentenced person if he or she were—

(i) convicted in the State of an offence corresponding to the offence of which he or she was convicted in the sentencing state, or

(ii) the subject of a special verdict under section 5 of the Act of 2006,

and

(b) in so far as it applies to the duration of a sentence imposed in a sentencing state, a sentence that is greater than the maximum term of imprisonment or other detention to which the sentenced person would be liable if he or she were convicted in the State of an offence corresponding to the offence of which he or she was convicted in the sentencing state.

#### **Transfer to State of enforcement of sentence**

**7D.** (1) Subject to subsection (2), the enforcement of a sentence shall, where the sentenced person is in the sentencing state, be governed by the law of the State from the time he or she is delivered into the custody of a person authorised by the Minister to receive the sentenced person under a warrant issued under section 7(2).

(2) Where a sentenced person escapes from custody or other detention and has not been retaken, the enforcement of the sentence shall revert to the sentencing state upon receipt by the sentencing state of notification by the Minister of the escape.

#### **Termination of enforcement**

**7E.** (1) The enforcement of a sentence in the State shall cease where the Minister 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 ceased to be enforceable in that state immediately or from such date as is contained in the notification.

(2) The Minister shall, on receipt of a notification under subsection (1), immediately inform the following persons of the decision or measure referred to in the notification:

(a) where the sentenced person is in a prison, the governor of the prison;

(b) where the sentenced person is in a designated centre, the clinical director of the designated centre;



- (c) where the sentenced person is in a children detention school, the Director of the children detention school.
- (3) Subject to subsection (4), a sentenced person to whom a notification referred to in subsection (1) relates shall, upon the governor of the prison, the clinical director of the designated centre or the Director of the children detention school (as the case may be) being informed under subsection (2) that the notification has been received, be released from custody or other detention forthwith or on such later date as may be specified in the notification.
- (4) Subsection (3) shall not apply where—
  - (a) (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 paragraph, be entitled to be released under subsection (3), 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
  - (b) (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 paragraph, be entitled to be released under subsection (3), 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.
- (5) In this section, ‘governor’, in respect of a prison, means—
  - (a) the governor of the prison, or
  - (b) a person who is for the time being performing the functions of governor of the prison.”.

#### **Amendment of section 9 of Act of 1995**

#### **63. Section 9 of the Act of 1995 is amended—**

- (a) in subsection (1)—
  - (i) by the insertion of “(including as part of an application under section 7C)” after “at any time”,
  - (ii) by the substitution of “this Act and the Convention” for “the provisions of the Convention”,
  - (iii) by the insertion of “or a committal order” after “out of the State”, and

(iv) by the substitution of the following paragraph for paragraph (b):

“(b) in the case of a warrant issued under section 7(2) or a committal order, apply to the High Court for an order revoking, or varying the terms of, the warrant or committal order, as the case may be.”,

(b) by the substitution of the following subsection for subsection (2):

“(2) A sentenced person may in writing request the Minister to bring an application under subsection (1)(b) and the Minister shall bring the application unless, having regard to all the circumstances, he or she is satisfied that it is not necessary.”,

and

(c) by the insertion of the following subsection after subsection (2):

“(3) The High Court may, upon an application under subsection (1)(b), make an order revoking or varying the terms of a warrant or order referred to in that subsection if the court is satisfied that the revocation or variation is necessary for the purposes of this Act and the Convention.”.

—An tAire Dlí agus Cirt.

**60.** In page 40, between lines 25 and 26, to insert the following:

## “PART 6

### AMENDMENT OF ACT OF 2005

#### **Amendment of section 1 of Act of 2005**

**64.** Section 1(1) of the Act of 2005 is amended—

(a) by the substitution of the following definition for the definition of “sentence”:

“ ‘sentence’ means a punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time on account of a criminal offence and includes a punishment or measure that includes a limited or unlimited period of time that is served otherwise than in custody;”,

and

(b) by the insertion of the following definitions:

“ ‘Act of 2006’ means the Criminal Law (Insanity) Act 2006;

‘children detention school’ has the same meaning as it has in section 3(1) of the Children Act 2001;

‘committal order’ has the meaning assigned to it by section 10(1);

‘deductible period’, in relation to a sentenced person, means—

- (a) the period spent by the person in custody in the State on foot of a warrant issued under section 8 or 9 awaiting the making of a committal order, and
- (b) the period (if any) of the sentence indicated by a sentencing country to be deducted from the total length of the sentence—
  - (i) in respect of an amnesty, pardon, clemency or other such decision granted by the sentencing country in relation to the sentence, and
  - (ii) in respect of any other reduction (including a period of remission of sentence) in relation to the part of the sentence which has been served by the person in that country;

‘designated centre’ has the same meaning as it has in section 1 of the Act of 2006;

‘place of detention’ means—

- (a) a prison,
- (b) a designated centre, or
- (c) a children detention school;

‘prison’ means a place of custody (other than a Garda Síochána station) administered by or on behalf of the Minister and includes a place—

- (a) provided under section 2 of the Prisons Act 1970, and
- (b) specified under section 3 of the Prisons Act 1972;”.

#### **Amendment of section 7 of Act of 2005**

- 65.** Section 7 of the Act of 2005 is amended by the insertion of the following subsection after subsection (2):

“(2A) For the purposes of subsection (2)(d) and section 8(2)(b)(iv), where the sentence imposed in a sentencing country is in relation to more than one offence, the requirement set out in those provisions shall be deemed to be satisfied where any one or more of the offences for which the sentence was imposed corresponds to an offence under the law of the State.”.

#### **Amendment of section 8 of Act of 2005**

- 66.** Section 8 of the Act of 2005 is amended—

- (a) in subsection (1), by the insertion of “the continued enforcement of the sentence (in its legal nature and duration) and” after “High Court for”,

(b) in subsection (2), by the insertion of “for the purpose of the enforcement of the sentence” after “concerned”, and

(c) by the insertion of the following subsection after subsection (2):

“(2A) Where the High Court issues a warrant under subsection (2), the Court shall take all such measures as are necessary to enforce the sentence and, in particular, may make an order under section 10B(3) or (5) or both adapting the sentence.”.

### **Identification procedures for purpose under Act**

**67.** The Act of 2005 is amended by the insertion of the following section after section 9:

“**9A.** (1) Where a member of the Garda Síochána arrests a person under any power conferred by this Act, the member of the Garda Síochána may, in order to assist in verifying or ascertaining the identity of the person for any purpose under this Act—

(a) take, or cause to be taken, his or her fingerprint,

(b) take, or cause to be taken, his or her palm print, and

(c) photograph him or her or cause him or her to be photographed.

(2) Where a fingerprint, palm print or photograph taken pursuant to subsection (1) is lost or damaged, or is otherwise unsuitable for use for the purpose referred to in that subsection, it may be taken on a second or any further occasion.

(3) The powers conferred by subsection (1) shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of inspector.

(4) A member of the Garda Síochána may, where a person fails or refuses to allow his or her fingerprint, palm print or photograph to be taken pursuant to subsection (1), use such force as he or she reasonably considers necessary to take the fingerprint, palm print or photograph or to cause the photograph to be taken.

(5) The powers conferred by subsection (4) shall not be exercised except where authorised by a member of the Garda Síochána not below the rank of superintendent.

(6) An authorisation pursuant to subsection (5) may be given orally or in writing and if given orally shall be confirmed in writing as soon as practicable.

(7) Where a member of the Garda Síochána intends to exercise a power conferred by subsection (4), he or she shall inform the person who fails or refuses to allow his or her fingerprint, palm print or photograph to be taken pursuant to subsection (1)—

(a) of that intention, and

- (b) that an authorisation to do so has been given pursuant to subsection (5).
- (8) A fingerprint, palm print or photograph taken pursuant to subsection (4) shall be taken in the presence of a member of the Garda Síochána not below the rank of inspector.
- (9) The taking of a fingerprint, palm print or photograph pursuant to subsection (4) shall be recorded by electronic or similar means.
- (10) A fingerprint, palm print or photograph of a person taken in pursuance of a power conferred by this section and every copy and record thereof shall be destroyed on the later of—
  - (a) the expiration of the period of 12 months from the date of the taking of the fingerprint, palm print or photograph, as the case may be, or
  - (b) the expiry of the sentence of imprisonment imposed on the person to which a request under section 6 or 7 relates.
- (11) A person who obstructs a member of the Garda Síochána in exercise of the powers under this section shall be guilty of an offence and shall, on summary conviction, be liable to a class A fine or to imprisonment for a term not exceeding 12 months or both.
- (12) Where a fingerprint, palm print or photograph of a person in respect of whom a request under section 7 has been received is transmitted by or on behalf of a sentencing country, such fingerprint, palm print or photograph shall, unless the contrary is proved, be received in evidence without further proof.”.

#### **Amendment of section 10 of Act of 2005**

**68.** Section 10 of the Act of 2005 is amended—

- (a) in subsection (1)—
  - (i) by the substitution of “order (in this Act referred to as a ‘committal order’) for the purpose of enforcement of the sentence, committing the person to a place of detention” for “order committing the person to a prison”, and
  - (ii) by the substitution of “a period, subject to subsection (3), equal” for “a period equal”,
- (b) in subsection (2), by the substitution of “a committal order” for “an order under subsection (1)”,
- (c) by the substitution of the following subsection for subsection (3):
  - “(3) In determining the period for which a sentenced person may be committed to a place of detention in a committal order—
    - (a) the High Court shall not have regard to the provisions of law of the

sentencing country under which the sentenced person is entitled to early or conditional release, and

(b) where by operation of law of the sentencing country the sentenced person would be entitled, other than in accordance with paragraph (a), to be released from custody, whether under licence or otherwise, at a specified time having served a specified portion of the sentence—

(i) the High Court shall treat such release as a measure relating to the administration of the sentence, and

(ii) the sentence shall be treated as a sentence to be spent in custody or other detention for the full period.”,

(d) by the substitution of the following subsection for subsection (4):

“(4) Where a committal order is made in respect of a sentenced person who has been sentenced to a term of imprisonment for life in a sentencing country, the order shall specify that the person is to be committed for imprisonment for life irrespective of whether his or her eligibility for early or conditional release (including parole) in the sentencing country was—

(a) restricted for the whole term of the sentence, or

(b) conditional on his or her having served a specified term of imprisonment as a result of—

(i) a decision or order by the court or tribunal that imposed the sentence,

(ii) the operation of law of the sentencing country, or

(iii) a decision of a body in the sentencing country, other than a body referred to in subparagraph (i), on whom a power to make such a decision has been conferred by law.”,

(e) by the substitution of the following subsection for subsection (5):

“(5) Notwithstanding subsection (1), the period for which a sentenced person may be committed to a place of detention in a committal order may exceed the period for which he or she could lawfully have been detained or otherwise had his or her personal liberty restricted in custody in the sentencing country.”,

(f) in subsection (6)(a)—

(i) by the substitution of “committal order” for “an order under subsection (1)”, and

(ii) by the substitution of “the place of detention” for “prison”,

and

(g) by the repeal of subsection (7).

### **Effect of committal order and related matters**

**69.** The Act of 2005 is amended by the insertion of the following sections after section 10:

#### **“Effect of committal order**

**10A.** (1) Subject to subsections (3) and (4) and section 10B, the effect of a committal order shall be to authorise the continued enforcement by the State of a sentence (in its legal nature and duration) imposed in a sentencing country and such an order shall—

- (a) where a sentenced person is to be committed to a prison, have the same force and effect as an order imposing a sentence of imprisonment following conviction by the court,
  - (b) where a sentenced person is to be committed to a designated centre, have the same force and effect as an order by the court under section 5(2) of the Act of 2006 committing a person to such a centre, and
  - (c) where a sentenced person is to be committed to a children detention school, have the same force and effect as an order imposing a sentence of detention in a children detention school following conviction by the court.
- (2) Without prejudice to the generality of subsection (1), the following shall apply in relation to a sentence which is to be enforced in the State—
- (a) section 17(3) of the Criminal Justice Administration Act 1914 in respect of a sentenced person committed to a prison,
  - (b) the power to commute or remit a punishment under section 23 of the Criminal Justice Act 1951,
  - (c) the power of the Minister to give a direction that a sentenced person be released from prison for a temporary period under section 2 of the Criminal Justice Act 1960 or be released for such period as may be specified by the Minister under section 2A of that Act,
  - (d) the power of the Parole Board to make a parole order under section 27 of the Parole Act 2019 in respect of a sentenced person, and
  - (e) in so far as the period served by a sentenced person in a place of detention on foot of a warrant issued under section 8 or 9 and a committal order is concerned, the rules or practice whereby sentenced persons generally may earn remission of sentences by industry or good conduct.

- (3) A person in respect of whom a warrant is issued under section 8 or 9 or a committal order is made shall not be entitled to bring any appeal in the State against the conviction or the sentence imposed in the sentencing country.
- (4) The Criminal Procedure Act 1993 shall not apply to a person in respect of whom a warrant is issued under section 8 or 9 or a committal order is made in so far as the conviction or sentence imposed in the sentencing country is concerned.

#### **Adaptation**

- 10B.** (1) The High Court may, on the application by or on behalf of the Minister (whether as part of an application under section 8(1) or at any other time) or of its own motion, make an order under subsection (3) or (5) or both adapting a sentence.
- (2) An application under subsection (1) shall be made on notice to the sentenced person.
  - (3) Where the sentence imposed in the sentencing country is by its legal nature incompatible with the law of the State, the High Court may make an order adapting the legal nature of the sentence to that of a sentence prescribed by the law of the State for an offence similar to the offence for which the sentence was imposed.
  - (4) The legal nature of a sentence adapted under subsection (3) shall, as far as practicable, correspond to the legal nature of the sentence concerned imposed in the sentencing country and shall not, in any event, either—
    - (a) aggravate it, or
    - (b) exceed the maximum penalty prescribed by the law of the State for a similar offence.
  - (5) Where the sentence imposed in the sentencing country is by its duration incompatible with the law of the State, the High Court may make an order adapting the duration of the sentence to that of a sentence prescribed by the law of the State for an offence similar to the offence for which the sentence was imposed.
  - (6) The duration of a sentence adapted under subsection (5) shall, as far as practicable, correspond to the duration of the sentence imposed in the sentencing state and shall not, in any event, either—
    - (a) aggravate it, or
    - (b) exceed the maximum penalty prescribed by the law of the State for a similar offence.
  - (7) The enforcement of a sentence that is, by its legal nature or duration, incompatible with the law of the State shall not be deemed to be unlawful by reason only of the sentence not having been adapted by



way of an order under subsection (3) or (5) or both.

- (8) A sentenced person may continue to be detained or otherwise restricted in his or her personal liberty pursuant to a warrant issued under section 8 or 9 or a committal order notwithstanding that an application is made under subsection (1) for an order under subsection (3) or (5) or both adapting his or her sentence.
- (9) A sentence shall not be taken by its legal nature to be incompatible with the law of the State by reason only of—
  - (a) the duration of the sentence imposed in a sentencing country,
  - (b) any provisions of law of the sentencing country in respect of early or conditional release which applied to the sentence prior to the transfer of its enforcement to the State,
  - (c) any provisions of law of the sentencing country, other than the provisions referred to in paragraph (b), under which the sentenced person would be entitled to be released from custody, whether under licence or otherwise, at a specified time having served a portion of the sentence,
  - (d) in the case of a sentence of imprisonment for life—
    - (i) any restriction for the whole term of the sentence regarding the eligibility of the sentenced person to early or conditional release (including parole), or
    - (ii) any condition that means that the eligibility of the sentenced person to early or conditional release (including parole) was conditional on his or her having served a specified term of imprisonment as a result of—
      - (I) a decision or order by the court or tribunal that imposed the sentence,
      - (II) the operation of law of the sentencing country, or
      - (III) a decision of a body in the sentencing country, other than a body referred to in clause (I), on whom a power to make such a decision has been conferred by law,
- or
- (e) its imposition in the sentencing country in respect of more than one offence.
- (10) In this section, ‘incompatible with the law of the State’ means—
  - (a) in so far as it applies to the legal nature of a sentence imposed in a sentencing country, a sentence that, subject to subsection (9), consists of a punishment or measure that is different in nature from the punishment or measure which could be imposed on the

sentenced person if he or she were—

- (i) convicted in the State of an offence corresponding to the offence of which he or she was convicted in the sentencing country, or
- (ii) the subject of a special verdict under section 5 of the Act of 2006,

and

- (b) in so far as it applies to the duration of a sentence imposed in a sentencing country, a sentence that is greater than the maximum term of imprisonment or other detention to which the sentenced person would be liable if he or she were convicted in the State of an offence corresponding to the offence of which he or she was convicted in the sentencing country.

#### **Transfer to State of enforcement of sentence**

**10C.** (1) Subject to subsection (2), the enforcement of a sentence shall, where the sentenced person is in the State and he or she is a person to whom section 10(1) applies, be governed by the law of the State, from the date of the making of an order under that section.

- (2) Where a sentenced person escapes from custody or other detention and has not been retaken, the enforcement of the sentence shall revert to the sentencing country upon receipt by the sentencing country of notification by the Minister of the escape.

#### **Termination of enforcement**

**10D.** (1) The enforcement of a sentence in the State shall cease where the Minister is notified by the sentencing country of any decision or measure, other than a decision or measure in respect of remission, as a result of which the sentence ceased to be enforceable in that country immediately or from such date as is contained in the notification.

- (2) The Minister shall, on receipt of a notification under subsection (1), immediately inform the following persons of the decision or measure referred to in the notification:

- (a) where the sentenced person is in a prison, the governor of the prison;
- (b) where the sentenced person is in a designated centre, the clinical director of the designated centre;
- (c) where the sentenced person is in a children detention school, the Director of the children detention school.

- (3) Subject to subsection (4), a sentenced person to whom a notification referred to in subsection (1) relates shall, upon the governor of the prison, the clinical director of the designated centre or the Director of the children detention school (as the case may be) being informed under subsection (2) that the notification has been received, be

released from custody or other detention forthwith or on such later date as may be specified in the notification.

(4) Subsection (3) shall not apply where—

- (a) (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 paragraph, be entitled to be released under subsection (3), 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

- (b) (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 paragraph, be entitled to be released under subsection (3), 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.

(5) In this section, ‘governor’, in respect of a prison, means—

- (a) the governor of the prison, or
- (b) a person who is for the time being performing the functions of governor of the prison.

#### **Revocation and variation of warrants and orders**

**10E.** (1) The Minister may at any time (including as part of an application under section 10B) apply to the High Court for an order revoking, or varying the terms of a warrant under section 8 or 9 or a committal order.

- (2) A sentenced person may in writing request the Minister to bring an application under subsection (1) and the Minister shall bring the application unless, having regard to all the circumstances, he or she is satisfied that it is not necessary.
- (3) The High Court may, upon an application under subsection (1), make an order revoking or varying the terms of a warrant or order referred to in that subsection if the court is satisfied that the revocation or variation is necessary for the purposes of this Act and the Convention on the Transfer of Sentenced Persons done at Strasbourg on 18 December 1997.”.

**Repeal of section 11 of Act of 2005**

70. Section 11 of the Act of 2005 is repealed.

**Amendment of section 12 of Act of 2005**

71. Section 12 of the Act of 2005 is amended by the substitution of “a committal order” for “an order under subsection (1) of section 10”.”.

—An tAire Dlí agus Cirt.

61. In page 43, between lines 2 and 3, to insert the following:

**“Amendment of section 151 of Children Act 2001**

53. Section 151(4) of the Children Act 2001 is amended by the substitution of “or 3, or conditional release under section 2A,” for “or 3”.”.

—An tAire Dlí agus Cirt.

62. In page 43, to delete lines 3 to 40, and in page 44, to delete lines 1 and 2 and substitute the following:

**“Amendment of Act of 2003**

53. The Act of 2003 is amended by the substitution of the following section for section 45B:

“45B. (1) Where a national or resident of another state from which he or she is surrendered—

- (a) is surrendered to the State pursuant to a Trade and Cooperation Agreement arrest warrant or an arrest warrant within the meaning of the EU-Iceland Norway Agreement with a view to being prosecuted in the State, and
- (b) whose surrender is subject to the condition that he or she, after being so prosecuted, is returned to that other state in order to serve any custodial sentence or detention order imposed upon him or her in the State,

the Minister shall, following the final determination of the proceedings and if the person consents, issue a warrant under section 5 of that Act for the transfer of the person from the State to that state in order to serve there any custodial sentence or detention order so imposed.

(2) Where a national or resident of another state from which he or she is surrendered—

- (a) is surrendered to the State pursuant to a European arrest warrant with a view to being prosecuted in the State, and
- (b) whose surrender is subject to the condition that he or she, after being so prosecuted, is returned to that other state in order to serve any sentence (within the meaning of the *Act of 2023*) imposed upon

him or her in the State,

the Minister shall, following the final determination of the proceedings, forward the judgment in the proceedings together with a copy of a Framework Decision Certificate (within the meaning of the *Act of 2023*) to that other state in order for the person to serve there any sentence so imposed.

(3) For the purposes of subsection (1)—

- (a) a reference to the administering state in the Act of 1995 shall be construed as a reference to the state from which a person under subsection (1) is surrendered,
- (b) a person to whom subsection (1) applies shall be deemed to have made an application under section 4(1) of the Act of 1995, and
- (c) the state from which the person under subsection (1) is surrendered shall be deemed to have agreed under section 4(3)(f) of the Act of 1995 to the transfer.

(4) For the purposes of subsection (2), *Part 2* of the *Act of 2023* shall apply in respect of a judgment referred to in that subsection as it applies to a judgment to which that Part applies, subject to the following modifications:

- (a) the competent authority of the state from which a person under subsection (2) is surrendered shall be deemed to have made an application within the meaning of *Part 2* of the *Act of 2023*;
- (b) a reference in *Part 2* of the *Act of 2023* to the executing state shall be construed as a reference to the state from which a person under subsection (2) is surrendered;
- (c) where *paragraph (c)* of *section 14* of the *Act of 2023* applies, the competent authority of the executing state shall be deemed to have given its consent under that provision;
- (d) any other necessary modifications.

(5) In this section—

‘Act of 1995’ means the Transfer of Sentenced Persons Act 1995;

‘*Act of 2023*’ means the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*.”.

—An tAire Dlí agus Cirt.

63. In page 44, between lines 2 and 3, to insert the following:

**“Amendment of section 25 of Criminal Justice Act 2007**

54. Section 25(8) of the Criminal Justice Act 2007 is amended—

(a) in paragraph (c), by the substitution of “Criminal Justice Act 1960,” for “Criminal Justice Act 1960, or”, and

(b) by the insertion of the following paragraph after paragraph (c):

“(ca) conditionally released under section 2A of the Criminal Justice Act 1960, or”.’”.

—An tAire Dlí agus Cirt.

**64.** In page 44, to delete lines 12 to 20 and substitute the following:

“(ii) by the insertion of the following clause after clause (I):

“(IA) a committal order within the meaning of the Transfer of Sentenced Persons Act 1995,”

(iii) by the insertion of the following clauses after clause (II):

“(III) a committal order within the meaning of the Transfer of Execution of Sentences Act 2005, or

(IV) a committal order within the meaning of *Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*,”

and

(iv) by the insertion of “or an appropriate court (within the meaning of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*), as the case may be,” after “the offence that the High Court”,’”.

—An tAire Dlí agus Cirt.

**65.** In page 45, to delete lines 1 to 10 and substitute the following:

“(ii) by the insertion of the following clause after clause (I):

“(IA) a committal order within the meaning of the Transfer of Sentenced Persons Act 1995,”

(iii) by the insertion of the following clauses after clause (II):

“(III) a committal order within the meaning of the Transfer of Execution of Sentences Act 2005, or

(IV) a committal order within the meaning of *Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*,”

and

(iv) by the insertion of “or an appropriate court (within the meaning of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*), as the case may be,” after “the offence that the High Court”,’”.

—An tAire Dlí agus Cirt.

66. In page 45, after line 38, to insert the following:

**“Amendment of section 58 of Criminal Law (Sexual Offences) Act 2017**

56. Section 58(7) of the Criminal Law (Sexual Offences) Act 2017 is amended—

(a) in paragraph (c), by the substitution of “Criminal Justice Act 1960,” for “Criminal Justice Act 1960, or”, and

(b) by the insertion of the following paragraph after paragraph (c):

“(ca) conditionally released under section 2A of the Criminal Justice Act 1960, or”.’”.

—An tAire Dlí agus Cirt.

67. In page 45, after line 38, to insert the following:

**“Amendment of section 8 of Criminal Justice (Victims of Crime) Act 2017**

57. Section 8(2)(m) of the Criminal Justice (Victims of Crime) Act 2017 is amended—

(a) by the insertion of the following subparagraph after subparagraph (ii):

“(iia) any conditional release of the person under section 2A of the Act of 1960 and any conditions attached to such release which relate to the victim,”,

(b) by the insertion of the following subparagraph after subparagraph (iii):

“(iia) without prejudice to subparagraph (iii)—

(I) any application to the Minister under section 4 of the Transfer of Sentenced Persons Act 1995 to transfer the person out of the State in order to serve the sentence or the balance thereof in another Convention state (within the meaning of that Act) and any transfer of the person out of the State in accordance with that Act, or

(II) any application within the meaning of *Part 2* of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* and any transfer of the person to an executing state (within the meaning of that Act) in accordance with that Part,”

and

(c) in subparagraph (v), by the substitution of “or 3, or on conditional release under section 2A,” for “or 3”.”.

—An tAire Dlí agus Cirt.

68. In page 45, after line 38, to insert the following:

**“Amendment of Parole Act 2019**

**58.** The Parole Act 2019 is amended—

(a) in section 2—

(i) in subsection (1), in the definition of “relevant governor”—

(I) in paragraph (b), by the substitution of “so released,” for “so released, or”, and

(II) by the insertion of the following paragraph after paragraph (b):

“(ba) where the parole applicant or parolee, as the case may be, is on conditional release from prison in accordance with a direction given by the Minister under section 2A of the Act of 1960, the governor of the prison from which he or she is so released, or”,

and

(ii) in subsection (3)—

(I) in paragraph (a)—

(A) by the substitution of “including” for “including both”,

(B) in subparagraph (i), by the substitution of “Act of 2001,” for “Act of 2001, and”,

(C) in subparagraph (ii), by the substitution of “Act of 1960, and” for “Act of 1960,” and

(D) by the insertion of the following subparagraph after subparagraph (ii):

“(iii) a person who is released from prison on conditional release in accordance with a direction given by the Minister under section 2A of the Act of 1960,”

and

(II) in paragraph (b)—

(A) in subparagraph (ii), by the substitution of “imprisonment,” for “imprisonment, and”,

(B) in subparagraph (iii), by the substitution of “that Act, and” for “that Act,” and

(C) by the insertion of the following subparagraph after subparagraph (iii):

“(iv) any time spent on conditional release from prison for a period in accordance with a direction given by the Minister under section 2A of the Act of 1960 while serving the sentence of



imprisonment other than time spent on such release where the currency of the sentence of the person is suspended pursuant to section 5 of that Act,”

(b) in section 6, by the insertion of the following paragraph after paragraph (a):

“(aa) the power of the Minister to give a direction that a person be released from prison for a period under section 2A of the Act of 1960,”

and

(c) in section 27—

(i) in subsection (2)—

(I) by the insertion of the following paragraph after paragraph (b):

“(ba) without prejudice to paragraphs (a), (b) and (c) to (m), in the case of a foreign sentence—

(i) any restriction, notified in writing to the Minister by the state in which the sentence was imposed, for the whole term of the sentence regarding the eligibility of the sentenced person to early or conditional release (including parole),

(ii) any condition, notified in writing to the Minister by the state in which the sentence was imposed, that means the eligibility of the sentenced person to early or conditional release (including parole) was conditional on his or her having served a specified term of imprisonment where the condition was as a result of—

(I) a decision or order by the court or tribunal that imposed the sentence,

(II) the operation of law of the state in which the sentence was imposed, or

(III) a decision of a body in the state in which the sentence was imposed, other than a body referred to in clause (I), on whom a power to make such a decision has been conferred by law,”

and

(II) in paragraph (c)(iii), by the insertion of “or 2A” after “section 2”,

and

(ii) by the insertion of the following subsections after subsection (3):

“(4) For the purposes of subsection (2)(b), a reference in that subsection to any recommendation of the court that imposed the sentence shall, in the case of a foreign sentence, be construed as a reference to any recommendation of the court or tribunal in the state that imposed the

sentence.

(5) In this section, ‘foreign sentence’, means—

- (a) a sentence of imprisonment for life, or
- (b) a sentence of imprisonment of a term equivalent to or longer than such term as may be prescribed in regulations made by the Minister under section 24(3),

that is imposed by a court or tribunal in a state, other than the State, the enforcement of which has been transferred to the State and thereafter continued in accordance with a committal order within the meaning of the Transfer of Sentenced Persons Act 1995, the Transfer of Execution of Sentences Act 2005 or *Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*, as the case may be.”.

—An tAire Dlí agus Cirt.

**69.** In page 46, to delete lines 18 to 25 and substitute the following:

“(a) by the insertion of the following paragraph after paragraph (a):

“(aa) the Transfer of Sentenced Persons Act 1995,”,

(b) in paragraph (c), by the substitution of “the European Arrest Warrant Act 2003,” for “the European Arrest Warrant Act 2003, or”,

(c) by the insertion of the following paragraph after paragraph (c):

“(ca) the Transfer of Execution of Sentences Act 2005,”,

(d) in paragraph (d), by the substitution of “the International Criminal Court Act 2006, or” for “the International Criminal Court Act 2006,”, and

(e) by the insertion of the following paragraph after paragraph (d):

“(e) *Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*,”.

—An tAire Dlí agus Cirt.

**70.** In page 46, between lines 25 and 26, to insert the following:

**“Amendment of Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020**

**58.** The Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020 is amended—

(a) in section 11—

- (i) in subsection (1), by the substitution of the following paragraph for paragraph (b):

“(b) establishes that he or she—

- (i) is lawfully and ordinarily resident in another Member State, or
  - (ii) intends to reside in a Member State, other than that referred to in subparagraph (i), and the competent authority of the other Member State has consented to the forwarding of the proposed supervision decision,
- and”,

and

(ii) by the insertion of the following subsection after subsection (11):

“(12) In this section, ‘other Member State’, in relation to a person, means—

- (a) where subsection (1)(b)(i) applies, the Member State in which the person is lawfully and ordinarily resident, and
- (b) where subsection (1)(b)(ii) applies, the Member State in which the person intends to reside.”,

(b) in section 12—

(i) in subsection (1)—

(I) by the substitution of the following paragraph for paragraph (a):

“(a) is—

- (i) lawfully and ordinarily resident in another Member State, or
- (ii) a person in respect of whom the competent authority of another Member State has consented to the forwarding of the proposed supervision decision,”,

and

(II) in paragraph (c), by the substitution of “reside in the other Member State” for “return to the other Member State to reside therein”,

(ii) in subsection (2), by the substitution of “reside in” for “return to”, and

(iii) by the insertion of the following subsection after subsection (3):

“(4) In this section, ‘other Member State’, in relation to a person, means—

- (a) where subsection (1)(a)(i) applies, the Member State in which the person is lawfully and ordinarily resident, and
- (b) where subsection (1)(a)(ii) applies, the Member State the competent authority of which has consented to the forwarding of a proposed supervision decision in relation to the person.”,

(c) in section 13, by the substitution of “(within the meaning of section 11 or 12, as the case may be)” for “concerned”,

(d) in section 14—

(i) in subsection (1), by the substitution of “(within the meaning of section 11 or 12, as the case may be)” for “concerned”, and

(ii) by the insertion of the following subsection after subsection (7):

“(8) The Central Authority shall not forward a supervision decision to more than one executing state at any one time.”,

and

(e) in section 28, by the insertion of the following subsections after subsection (7):

“(8) Where a court or person employed by, or acting for or on behalf of, the public administration of the State receives a supervision decision and Article 10 certificate directly from the competent authority of an issuing State, the court or person, as the case may be, shall—

(a) as soon as practicable send or arrange for the sending of, the documents to the Central Authority, and

(b) as soon as practicable so inform the competent authority of the issuing State by any means capable of producing a record in writing.

(9) For the purposes of this Part, the sending of a supervision decision and Article 10 certificate to the Central Authority under subsection (8) shall be deemed to constitute the forwarding of the documents to the Central Authority.”.

—An tAire Dlí agus Cirt.

71. In page 46, line 28, to delete “*paragraph (a) or (b)*” and substitute “*paragraph (a)*”.

—An tAire Dlí agus Cirt.

72. In page 46, line 30, to delete “*paragraph (c)*” and substitute “*paragraph (b)*”.

—An tAire Dlí agus Cirt.

73. In page 46, line 37, to delete “this Act comes” and substitute “*Parts 1 to 3 come*”.

—An tAire Dlí agus Cirt.

74. In page 47, lines 1 and 2, to delete “the Transfer of Sentenced Persons Act 1995” and substitute “the Act of 1995”.

—An tAire Dlí agus Cirt.

75. In page 47, line 3, to delete “the Transfer of Execution of Sentences Act 2005” and substitute “the Act of 2005”.

—An tAire Dlí agus Cirt.

76. In page 47, lines 7 and 8, to delete “under the Transfer of Sentenced Persons Act 1995 or the Transfer of Execution of Sentences Act 2005” and substitute “under the Act of 1995 or the Act of 2005”.

—An tAire Dlí agus Cirt.