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TRANSFER OF EXECUTION OF SENTENCES ACT 2005

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ACTS REFERRED TO

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



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TRANSFER OF EXECUTION OF SENTENCES ACT 2005

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

[13th December, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

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

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

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

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

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

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

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

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

(2) In this Act—

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

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

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

Application of Act.

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

Corresponding offences.

4.—For the purposes of this Act—

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

Designated countries.

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

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

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

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

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

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

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

Request for execution of sentence in designated country.

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

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

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

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

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

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

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