Number 3 *of* 2023

CRIMINAL JUSTICE (MUTUAL RECOGNITION OF CUSTODIAL SENTENCES) ACT 2023

REVISED

Updated to 23 July 2024

This Revised Act is an administrative consolidation of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024* (30/2024), enacted 23 July 2024, and all statutory instruments up to and including the *European Union (Hague Maintenance Convention) (Amendment) Regulations 2024* (S.I. No. 381 of 2024), made 23 July 2024, were considered in the preparation of this Revised Act.

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Number 3 *of* 2023

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COUNCIL FRAMEWORK DECISION 2008/909/JHA OF 27 NOVEMBER 2008 AS AMENDED BY COUNCIL FRAMEWORK DECISION 2009/299/JHA OF 26 FEBRUARY 2009

ACTS REFERRED TO

Children Act 2001 (No. 24)
Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (No. 13)
Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (No. 11)
Criminal Justice (Mutual Assistance) Act 2008 (No. 7)
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Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 (No. 20)
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European Arrest Warrant Act 2003 (No. 45)
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Number 3 *of* 2023

CRIMINAL JUSTICE (MUTUAL RECOGNITION OF CUSTODIAL SENTENCES) ACT 2023

REVISED

Updated to 23 July 2024

An Act to give effect to Council Framework Decision 2008/909/JHA of 27 November 2008[1] on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial; for that purpose to amend the European Arrest Warrant Act 2003 and other enactments; 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[2] 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; and to provide for related matters.

[1*st March,* 2023]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and General

Short title, collective citations and commencement

1. (1) This Act may be cited as the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023.

[1] OJ No. L327, 5.12.2008, p. 27
[2] OJ No. L294, 11.11.2009, p. 20

(2) The European Arrest Warrant Acts 2003 and 2012 and *section 75* may be cited together as the European Arrest Warrant Acts 2003 to 2023.

(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.

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

Annotations

Editorial Notes:

E1 Power pursuant to subs. (4) exercised (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (Commencement) Order 2023* (S.I. No. 213 of 2023).

2. The 3rd day of May 2023 is appointed as the day on which the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (No. 3 of 2023) shall come into operation.

Interpretation

2. (1) In this Act—

"Act of 1960" means the Criminal Justice Act 1960;

"Act of 1995" means the Transfer of Sentenced Persons Act 1995;

"Act of 2003" means the European Arrest Warrant Act 2003;

"Act of 2005" means the Transfer of Execution of Sentences Act 2005;

"Act of 2006" means the Criminal Law (Insanity) Act 2006;

"Act of 2019" means the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019;

"appropriate court" means the High Court;

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

"clinical director", in relation to a designated centre, has the same meaning as it has in the Mental Health Act 2001;

"competent authority", in relation to an executing state or issuing state, means the authority designated by the executing state or issuing state, as the case may be, to be the competent authority in that state for the purposes of the Framework Decision;

"court" means any court exercising criminal jurisdiction and includes a court-martial;

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

"Director General of the Irish Prison Service" means the person appointed by the Minister to the post of Director General of the Irish Prison Service;

"Director of a children detention school" means a person who has been appointed under section 180 of the Children Act 2001 and who is responsible for the immediate control and supervision of a children detention school;

"executing state" means the Member State to which a judgment is, or is to be, forwarded in accordance with *Part 2* for the purposes of its recognition and enforcement in that state;

"Framework Decision" means Council Framework Decision 2008/909/JHA of 27 November 2008[3] on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009[4] amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, the text of which in the English language is for convenience of reference set out in the *Schedule*;

"Framework Decision 2008/947/JHA" means Council Framework Decision 2008/947/JHA of 27 November 2008[5] on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009[6] amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial;

"Framework Decision Certificate" means the certificate provided for in Article 4 of the Framework Decision, the standard form of which is set out in Annex I to the Framework Decision;

"issuing state" means the Member State in which a judgment is delivered;

"judgment" means a final decision, direction or order—

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

(b) where *Part 3* applies, of a court in an issuing state,

imposing a sentence on a natural person and, unless otherwise specified, includes a record in writing of that decision, direction or order or a certified copy thereof;

"Member State" means—

(a) a state, other than the State, that is a Member State of the European Union, and

(b) a state that is declared under *section 85* to be a Member State;

"Minister" means the Minister for Justice;

"place of detention" means—

(a) a prison,

(b) a designated centre, or

(c) a children detention school;

[3] OJ No. L 327, 5.12.2008, p. 27
[4] OJ No. L 81, 27.3.2009, p. 24
[5] OJ No. L 337, 16.12.2008, p.102
[6] OJ No. L 81, 27.3.2009, p. 24

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

(a) a place provided under section 2 of the Prisons Act 1970, and

(b) a place specified under section 3 of the Prisons Act 1972;

"relevant language", in relation to a translation of a Framework Decision Certificate or a judgment, means—

(a) where *Part 2* or *section 73(7)* applies, the official language or one of the official languages of an executing state or such other language as an executing state may, having regard to any declaration by that state under Article 23(1) of the Framework Decision, accept, and

(b) where *Part 3* applies, the official language or one of the official languages of an issuing state or such other language as an issuing state may, having regard to any declaration by that state under Article 23(1) of the Framework Decision, accept;

"sentence" means a custodial sentence or measure involving deprivation of liberty imposed by a court for a limited or unlimited period of time on account of a criminal offence in 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;

"sentenced person", in relation to a judgment, means the person the subject of the judgment.

(2) A word or expression that is used in this Act and also used in the Framework Decision has, other than where the context otherwise requires, the same meaning in *Part 2* or *3*, as the case may be, as in the Framework Decision.

(3) For the purposes of *Part 2* or *3*, a sentenced person shall be deemed to be living in a state if it is the place to which he or she is attached based on his or her habitual residence and on his or her family, social or professional ties with that place.

Application of Act

3. This Act applies to sentences whether imposed before, on or after the date on which it comes into operation.

Executing state presumed to comply with Framework Decision

4. It shall be presumed that an executing state will comply with the requirements of the Framework Decision, unless the contrary is shown.

Competent authorities in State

5. (1) Subject to *subsection (2)*, the Minister is the competent authority in the State for the purposes of this Act and the Framework Decision.

(2) The appropriate court is the competent authority in the State for the purposes of—

(a) the provision of consent under *section 27(1)* to a request from the competent authority of an executing state,

(b) the grant or refusal of an application under *section 37(1)* to recognise a judgment in the State and enforce a sentence to which the judgment relates,

(c) partial recognition and enforcement within the meaning assigned to it by *section 39(1)*,

(d) the adaptation of a sentence under *section 40*,

(e) the issue of a warrant under *section 42(1)(a)* or *(b)* for the purpose of enforcement of a sentence in the State,

(f) the making of an order under *section 43(1)* or *(2)* for the purpose of enforcement of a sentence in the State, and

(g) the issue of a request under *section 47(3)* for the consent of the competent authority of an issuing state.

Transmission of documents

6. (1) Where the Minister is required to forward a document or provide information to the competent authority of an executing state or an issuing state for the purposes of *Part 2* or *3* or *section 73*, the Minister shall transmit the document or provide the information concerned by any means (including delivery) capable of producing a record in writing under conditions allowing the competent authority to establish the authenticity of the document or the information.

(2) *Subsection (3)* applies if a document forwarded to the Minister for the purposes of *Part 2* or *3* or *section 73* has been directly forwarded to the Minister by any means (including delivery) which has produced a record in writing of the document under conditions allowing the Minister to establish the authenticity of the document.

(3) The record in writing of a document shall be deemed to be the document that was transmitted.

(4) For the purposes of *Part 2* or *3* or *section 73*, a document shall be deemed to be a true copy of an original document if it has been certified as a true copy of the original document by the competent authority of an issuing state.

(5) A document purporting to be a copy of—

(a) a Framework Decision Certificate,

(b) a judgment to which a certificate referred to in *paragraph (a)* applies,

(c) a translation of a document referred to in *paragraph (a)* or *(b)*, or

(d) any other document transmitted in accordance with *subsection (1)* by the competent authority of an executing state or an issuing state,

shall, unless the contrary is shown, be evidence in any proceedings of the matters specified therein without further proof.

Annual report to Houses of Oireachtas

7. (1) As soon as may be after the end of each year but not later than 4 months thereafter, the Minister shall cause to be laid before each House of the

Oireachtas a report on the operation of *Parts 1* to *3* and *section 73* during that year.

(2) Notwithstanding *subsection (1)*, if, but for this subsection, the first report under this section would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 4 months after the end of that year.

Expenses

8. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

State as issuing state

Interpretation (*Part 2*)

9. (1) In this Part—

"adaptation", in relation to a sentence, means the adaptation of the sentence in accordance with Article 8 of the Framework Decision;

"applicant" has the meaning assigned to it by *section 10(1)*;

"application" means an application under *section 10(1)*;

"decision to forward", in relation to a judgment, means a decision by the Minister under *section 16* to forward the judgment to the competent authority of an executing state;

"decision to recognise", in relation to a judgment, means a decision by the competent authority of an executing state to recognise the judgment and enforce the sentence to which it relates which has been forwarded to the competent authority;

"forward", in relation to a judgment, means to forward the judgment in accordance with *section 17*;

"Irish Prison Service" means the prison service of the Department of Justice, which is charged with the management of prisons;

"notification parties" has the meaning assigned to it by *section 11(1)*;

"original order" has the meaning assigned to it by *section 25(1)*;

"reasoned opinion" means the reasoned opinion of the competent authority of the executing state that the enforcement of a sentence in respect of a person by that state would not facilitate the social rehabilitation and successful reintegration of the person into society;

"transfer warrant" has the meaning assigned to it by *section 22(1)*.

(2) Nothing in this Part shall operate to prejudice the forwarding under section 11 of the Act of 2019 of a judgment in the State (within the meaning of Part 2 of the Act of 2019) and, where applicable, the probation decision

(within the meaning of Part 2 of the Act of 2019), to a Member State competent authority (within the meaning of the Act of 2019).

Application to forward judgment

10. (1) Each of the following persons (in this Part referred to as "applicant") may make an application in writing to the Minister to forward a judgment imposed in the State to a competent authority of an executing state for the purposes of the recognition of the judgment and enforcement of the sentence to which the judgment relates in that state:

(a) the sentenced person;

(b) where the sentenced person is in a prison, the Director General of the Irish Prison Service;

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

(d) where the sentenced person is in a children detention school, the Director of the children detention school;

(e) the competent authority of the executing state (in so far as the application is to forward the judgment to the executing state for which the competent authority is designated).

(2) Without prejudice to *subsection (1)* and subject to *subsection (3)*, the Minister may consider whether to forward a judgment imposed in the State to a competent authority of an executing state for the purposes of the recognition of the judgment and enforcement of the sentence to which the judgment relates in that state.

(3) *Sections 11* to *16* shall apply to a consideration by the Minister under *subsection (2)* to forward a judgment as they apply to an application under *subsection (1)* and a reference in those sections to an application shall be construed as including a reference to such a consideration.

Information to be provided to notification parties

11. (1) The Minister shall, on receipt of an application in respect of a judgment, notify the competent authority of the executing state and the following persons (in this Part referred to as "notification parties"), other than the applicant, of the making of the application:

(a) where the sentenced person is in the State, that person;

(b) where the sentenced person is in a prison, the Director General of the Irish Prison Service;

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

(d) where the sentenced person is in a children detention school, the Director of the children detention school.

(2) The Minister shall notify the applicant and the notification parties in relation to an application of the following matters:

(a) a decision by the Minister to forward the judgment in respect of the application;

(b) a decision by the Minister to give his or her consent under *section 20(1)* to the partial recognition and enforcement by the executing state of the sentence to which a judgment in respect of the application relates;

(c) the receipt by the Minister of a decision to recognise the judgment in respect of the application;

(d) the receipt by the Minister of information regarding the adaptation of the sentence to which the application relates;

(e) a decision (including reasons for the decision) by the Minister under *section 28* to withdraw the Framework Decision Certificate in respect of the judgment to which the application relates.

(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.

Opinion of sentenced person

12. (1) Where an application is made in respect of a sentenced person in the State, the Minister, subject to *subsection (5)*, shall provide the sentenced person, or cause him or her to be provided, with an opportunity within such period as is specified in the notification referred to in *section 11(1)* (being a period of not less than 21 days) to give his or her opinion regarding the application.

(2) A sentenced person may give his or her opinion orally or in writing and, if given orally, the Minister shall arrange for the opinion to be recorded in writing.

(3) Where a sentenced person is, because of his or her age or physical or mental condition, incapable of giving his or her opinion, the Minister shall provide, or cause to be provided, the opportunity referred to in *subsection (1)* to the legal representative of the sentenced person, or any other person considered by the Minister to be an appropriate person for that purpose.

(4) Where an opinion is provided by a sentenced person under this section (including any case where *subsection (3)* applies), the Minister shall notify the competent authority of the executing state to which the application relates of the opinion.

(5) This section shall not apply unless the Minister is satisfied that the judgment may be forwarded.

Consent of sentenced person

13. (1) A judgment to which an application relates may not be forwarded to an executing state without the consent in writing of the sentenced person unless—

(a) the sentenced person is a national of the executing state and he or she lives in that state,

(b) the sentenced person will be sent to the executing state upon release from the enforcement of the sentence to which the judgment relates in accordance with an order included in, or ancillary to, the judgment, or

(c) the sentenced person fled, or otherwise returned, to the executing state—

(i) in circumstances in which the criminal proceedings to which the application relates were pending in the State against him or her, or

(ii) before he or she commenced serving the sentence imposed by a court in the State to which the application relates.

(2) Where a sentenced person is, because of his or her age or physical or mental condition, incapable of giving his or her consent under *subsection (1)*, the legal representative of the sentenced person or any other person considered by the Minister to be an appropriate person for that purpose may give the consent required under *subsection (1)*.

Consent of executing state

14. Subject to this Part, a judgment to which an application relates may be forwarded to the competent authority of an executing state for the purposes of the recognition of the judgment and enforcement of the sentence to which the judgment relates in the executing state where—

(a) the sentenced person is a national of the executing state and he or she lives in that state,

(b) the sentenced person is a national of the executing state and he or she will be sent to that state upon release from the enforcement of the sentence to which the judgment relates in accordance with an order included in, or ancillary to, the judgment, or

(c) in the case of any other executing state, the competent authority of the executing state has given its consent in writing to the forwarding of the judgment.

Consultation with executing state

15. (1) Before making a decision as to whether to forward a judgment to which an application relates, the Minister, subject to *subsection (3)*, shall—

(a) where the application relates to a sentenced person to whom *paragraph (a)* or *(b)* of *section 14* pplies, in so far as is reasonable and practicable, consult with the competent authority of the executing state referred to in the paragraph concerned, and

(b) where *section 14(c)* applies, consult with the competent authority of the executing state referred to in that section,

regarding the application, including whether the enforcement of the sentence by the executing state would facilitate the social rehabilitation and successful reintegration into society of the sentenced person.

(2) The Minister shall have regard to any views (including a reasoned opinion) as may be provided to him or her by the competent authority of an executing state.

(3) This section shall not apply unless the Minister is satisfied that the judgment may be forwarded.

Decision to forward judgment

16. (1) Subject to *subsections (2)* and *(3)*, the Minister may, where he or she is satisfied that *paragraph (a)*, *(b)* or *(c)* of *section 14* applies, forward a judgment to which an application relates to the competent authority of an executing state for the purposes of the recognition of the judgment and enforcement of the sentence to which the judgment relates in the executing state.

(2) A judgment may not be forwarded unless—

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

(b) other than where *paragraph (a)*, *(b)* or *(c)* of *section 13(1)* applies, the sentenced person has given his or her consent in writing to the judgment being forwarded and it has not been withdrawn under *section 21*,

(c) the Minister is satisfied that the enforcement of the sentence by the executing state would facilitate the sentenced person's social rehabilitation and successful reintegration into society having regard to—

(i) the presence in the executing state of any family members of the sentenced person,

(ii) the nature and extent of any linguistic, cultural, social or economic connections between the sentenced person and the executing state, and

(iii) such other matters as the Minister considers appropriate,

(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,

(e) the sentenced person is not subject to proceedings that have been brought, but have not been finally determined for his or her extradition or arrest under the Extradition Act 1965 or the Act of 2003,

(f) where *section 12(1)* applies (including any case where *section 12(3)* applies), the Minister has considered the opinion (if any) of the sentenced person under that section, and

(g) consultations in accordance with *section 15(1)* have taken place.

(3) The Minister shall not forward the judgment to more than one executing state at any one time.

(4) The Minister may, before forwarding a judgment, invite or otherwise take into account submissions by the sentenced person, the executing state and such persons as the Minister considers appropriate.

Forwarding of judgment

17. (1) Where the Minister makes a decision to forward a judgment, he or she shall—

(a) forward to the competent authority of the executing state—

(i) a copy of the judgment signed and certified by the Minister to be a true copy of the judgment,

(ii) a Framework Decision Certificate in respect of the judgment signed and certified by the Minister, and

(iii) subject to *subsection (2)*, a translation of the Framework Decision Certificate in a relevant language,

(b) where the sentenced person is in the State, notify him or her in the standard form as set out in Annex II to the Framework Decision, and

(c) where the sentenced person is in the executing state, send a notification to the competent authority of the executing state in the standard form as set out in Annex II to the Framework Decision.

(2) A translation of a Framework Decision Certificate referred to in *subsection (1)(a)(iii)* shall not be required where the executing state does not require such translation.

(3) The Minister shall, if required by the competent authority of an executing state, send the competent authority a certified copy of the judgment and the original of the Framework Decision Certificate.

Provisional arrest where sentenced person in executing state

18. Where the Minister has made a decision to forward a judgment to an executing state and the sentenced person is in the executing state, the Minister may, at any time—

(a) before the receipt by the competent authority of the executing state of the forwarded judgment and Framework Decision Certificate, or

(b) after the receipt by the competent authority of the executing state of the documents referred to in *paragraph (a)* but before a decision is made by the competent authority in the executing state regarding recognition of the judgment and enforcement of the sentence in that state,

request the executing state to arrest or otherwise detain the sentenced person pending the making of a decision referred to in *paragraph (b)*.

Communications with executing state after judgment forwarded

19. (1) The Minister shall, at the request of a competent authority of an executing state, provide the competent authority with a translation of a judgment, or such parts of the judgment as may be specified in the request, in a relevant language.

(2) Where a judgment has been forwarded to an executing state and there has been no consultation with the executing state, the Minister shall consider any reasoned opinion provided by the competent authority of that state where the opinion is provided without delay after the judgment is forwarded.

(3) The Minister shall, at the request of a competent authority of an executing state to which a judgment has been forwarded, provide without delay such additional information regarding the request as the Minister considers appropriate to the competent authority.

Consent of Minister to partial recognition and enforcement by executing state

20. (1) Where a judgment has been forwarded to an executing state, the Minister may, upon request of the competent authority of the executing

state, give his or her consent to the recognition of the judgment and enforcement of the sentence in part by that state.

(2) The Minister may not give his or her consent under *subsection (1)* where to do so aggravates the duration of the sentence.

Withdrawal of consent of sentenced person

21. (1) Where the consent of a sentenced person is required under *section 13(1)*, he or she may withdraw his or her consent at any time before a decision by the competent authority of the executing state to recognise the judgment and enforce the sentence in that state.

(2) Where *subsection (2)* of *section 13* applies, the consent required under *subsection (1)* of that section may be withdrawn in accordance with *subsection (1)* by the legal representative of the sentenced person or any other person considered by the Minister to be an appropriate person for that purpose.

Transfer warrant

22. (1) The Minister may, on receipt of a notification from the competent authority of an executing state of its decision to recognise a judgment, issue a warrant for the transfer of the sentenced person out of the State to the executing state (in this Part referred to as a "transfer warrant").

(2) A transfer warrant shall authorise—

(a) the taking of the sentenced person from his or her place of detention and his or her delivery into the custody of a person authorised by the competent authority of the executing state to receive the person—

(i) at a place of departure from the State, for conveyance to the executing state until the delivery is effected, or

(ii) at a place of entry to the executing state,

and

(b) the removal of the sentenced person from the State.

(3) Where a transfer warrant has been issued in respect of a sentenced person, he or she shall be deemed to be in legal custody at any time when he or she is being taken under the warrant to or from any place or being kept in custody under the warrant and, where the person escapes or is unlawfully at large, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

(4) The Minister may designate any person as a person who is, for the time being, authorised to take the sentenced person concerned to or from any place under the transfer warrant or to keep the person in custody under the warrant.

(5) A person authorised pursuant to *subsection (4)* to take a sentenced person to or from any place or to keep the person in custody shall, while so taking or keeping the sentenced person, have all the powers, authority, protection and privileges of a member of the Garda Síochána.

(6) If at any time before a sentenced person is transferred to an executing state under this section it appears appropriate to the Minister, in order that effect may be given to this Part, that a transfer warrant in respect of the person should be revoked or varied, the Minister may revoke or vary the warrant.

Transfer of sentenced person

23. (1) A sentenced person may be transferred to an executing state in accordance with a transfer warrant before the expiry of—

(a) the period of 30 days from the date on which the Minister has been notified by the competent authority of the executing state of the decision by that competent authority to recognise the judgment, or

(b) where *subsection (2)* applies, the period of 10 days from the revised date referred to in that subsection.

(2) Where, due to exceptional circumstances, a transfer does not occur within the period specified in *subsection (1)(a)*, the Minister and the competent authority of the executing state shall agree a revised date which shall be as soon as possible after the cessation of the exceptional circumstances.

Transfer of enforcement of sentence

24. (1) The enforcement of a sentence shall, subject to *subsection (2)*, cease to be governed by the law of the State and shall transfer to an executing state—

(a) where the sentenced person is in the State, from the time he or she is delivered into the custody of a person authorised by the competent authority of the executing state to receive the sentenced person under a transfer warrant, and

(b) where the sentenced person is in the executing state, from the date of the decision to recognise the judgment to which the sentence relates.

(2) Where the enforcement of a sentence has transferred to an executing state and the sentenced person escapes from custody and has not been retaken, the enforcement of the sentence shall revert to the State upon receipt by the Minister of notification from the competent authority of that state of such escape.

Continuation in effect of original order

25. (1) Without prejudice to *section 24* and subject to *subsections (2)* and *(3)*, the order by virtue of which a sentenced person is required to be detained or otherwise restricted in his or her personal liberty at the time a transfer warrant is issued in respect of him or her (in this Part referred to as the "original order") shall continue to authorise the detention or restriction concerned at any time after the enforcement of the sentence reverts to the State in accordance with *section 24(2)*.

(2) Where a sentenced person escapes from custody in an executing state while serving a term of imprisonment or detention in the equivalent of a prison or children detention school in the executing state, the currency of the sentence shall be suspended in respect of any period during which the person is unlawfully at large following his or her escape.

(3) Without prejudice to *section 26(2)*, the Minister may, at any time after the removal of a sentenced person from the State where the Minister considers it appropriate in order to give effect to this Part, direct that the original order be varied or cease to have effect.

(4) This section and *section 26*, apply to an order relating to that part of a sentence which is not transferred to an executing state as a result of the recognition and enforcement by that state of the sentence (to which the

judgment relates) in part and to which the Minister has given his or her consent under *section 20(1)*.

(5) Where, before the coming into operation of *section 75*, 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.

Arrest of sentenced person following escape from custody in executing state

26. (1) Where *section 24(2)* applies, a member of the Garda Síochána may arrest without warrant a sentenced person whom he or she suspects to be unlawfully at large following an escape referred to in that section.

(2) A sentenced person arrested under *subsection (1)* shall, as soon as may be after his or her arrest, be brought before an appropriate court and the court, for the purpose of the continued enforcement of the remainder of the sentence, shall, in accordance with *subsection (3)* or *(5)*, as the case may be, vary the original order.

(3) Where an appropriate court varies an original order under *subsection (2)*, the court shall take account of—

(a) the period spent by the person in custody in the State on foot of the original order,

(b) the period spent by the person in custody or other detention in the executing state in contemplation, or in consequence, of the recognition of the sentence (or part thereof) by the executing state,

(c) subject to *subsection (5)*, the period (if any) of the sentence indicated by an executing 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 executing 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 the executing state,

and

(d) the period spent by the person in custody in the State on foot of an arrest under *subsection (1)*.

(4) A person brought before the court under *subsection (2)* may be remanded in custody and for that purpose the appropriate court shall have the same powers of remand in relation to any person appearing before it under this section as it would have if the person were brought before it charged with an indictable offence.

(5) Where an appropriate court varies an original order under *subsection (2)* and there is a term of imprisonment or detention that a sentenced person is required to serve by virtue of the imposition of a sentence on foot of a judgment, part of which is not transferred to an executing state as a result of the recognition and enforcement by that state of the sentence (to which the judgment relates) in part, and to which the Minister has given his or her consent under *section 20(1)*—

(a) the term of imprisonment or detention which is not transferred shall be reduced by the periods referred to in *paragraphs (a)*, *(b)* and *(d)* of *subsection (3)*, and

(b) for the purpose of remission of that part of the sentence which is not transferred—

(i) the period spent by the person in custody or other detention in the executing state in contemplation, or in consequence, of the recognition by the executing state of the transferred sentence shall be treated as a period served by the person in the State, and

(ii) the rules or practice whereby sentenced persons generally may earn remission of sentences by industry or good conduct shall apply in relation to the period referred to in *subparagraph (i)*.

Rule of specialty (*Part 2*)

27. (1) Where a sentenced person is transferred to an executing state under a transfer warrant and the Minister receives a request from the executing state in accordance with *subsection (2)*, the Minister shall apply or cause an application to be made to the appropriate court for the court to give its consent to—

(a) proceedings being brought against the person in the executing state for an offence,

(b) the imposition in the executing state of a penalty, including a penalty consisting of a restriction of the person's personal liberty, in respect of an offence, or

(c) proceedings being brought against, or the detention of, the person in the executing state for the purpose of executing a sentence in respect of an offence.

(2) A request from an executing state referred to in *subsection (1)* shall include the following information in the Irish language or the English language—

(a) the name and nationality of the sentenced person to whom it relates,

(b) the name of the judicial authority in the executing state that issued the request, and the address of its principal office,

(c) the telephone number, fax number (if any) and email address of that judicial authority,

(d) the offence to which the request relates, including the nature and classification under the law of the executing state of the offence concerned,

(e) that a conviction or sentence is immediately enforceable against the sentenced person, or that a warrant for his or her arrest, or other order of a judicial authority in the executing state having the same effect, has been issued in respect of that offence,

(f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the sentenced person in the commission of the offence, and

(g) (i) the penalties to which the sentenced person would, if convicted of the offence, be liable,

(ii) where the sentenced person has been convicted of the offence and a sentence has been imposed in respect thereof, the penalties of which that sentence consists, and

(iii) where the sentenced person has been convicted of the offence specified therein but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence.

(3) The appropriate court shall give its consent under *subsection (1)* if it is satisfied that—

(a) were the person concerned in the State, and

(b) were there a European arrest warrant (within the meaning of the Act of 2003) issued in respect of the person by the executing state in relation to the offence to which the request relates,

there would be an obligation under the Act of 2003 to make an order directing that the person be surrendered to that state.

(4) A decision by the appropriate court regarding whether to give its consent under *subsection (1)* shall be taken as soon as practicable and in any event no later than 30 days from the date of receipt of the request in accordance with *subsection (2)*.

(5) In this section—

"judicial authority" has the same meaning as it has in the Act of 2003;

"offence" means, in relation to a sentenced person, an offence (other than an offence in respect of which he or she has been transferred to the executing state to serve the sentence in relation to) under the law of the executing state committed before his or her transfer to that state.

Withdrawal of Framework Decision Certificate

28. (1) The Minister may withdraw a Framework Decision Certificate to which a sentence relates at any time before the transfer under *section 24(1)* of the enforcement of the sentence to the executing state.

(2) The Minister shall, without prejudice to the generality of *subsection (1)*, without delay withdraw a Framework Decision Certificate to which a sentence relates at any time before the transfer under *section 24(1)* of the enforcement of the sentence to the executing state where—

(a) the Minister does not consent to a request referred to in *section 20(1)* for the partial recognition and enforcement by that state of a sentence to which the Certificate relates,

(b) the consent of the sentenced person to which the Certificate relates has been withdrawn under *section 21*,

(c) the sentenced person is believed to be in the executing state and he or she has not been located in that state, or

(d) having regard to the matters referred to in *subsection (3)*, the Minister considers that the withdrawal of the Certificate is in the public interest.

(3) The Minister shall have regard to the following matters when considering whether to withdraw a Framework Decision Certificate—

(a) any information received by the Minister from the competent authority of an executing state regarding the law of the executing state in respect of early or conditional release,

(b) a reasoned opinion provided to the Minister by the executing state in accordance with *section 19(2)*,

(c) any information received by the Minister regarding the adaptation or proposed adaptation of the sentence to which the Certificate relates, and

(d) such other matters as the Minister considers appropriate.

(4) The Minister shall, as soon as practicable after deciding to withdraw a Framework Decision Certificate under this section, give notice in writing of the decision (including reasons for the decision) to the competent authority of the executing state.

(5) Where a Framework Decision Certificate in respect of a sentenced person is withdrawn and the sentenced person is in the State, the Minister shall revoke any transfer warrant in respect of the person.

Cessation of enforcement of sentence

29. Where a sentenced person—

(a) is granted a pardon, under Article 13.6 of the Constitution, in respect of an offence consisting of an act or omission that constitutes in whole or in part the offence in respect of which he or she has been transferred to the executing state,

(b) has, by virtue of any Act of the Oireachtas, become immune from prosecution or punishment for an offence consisting of an act or omission that constitutes in whole or in part the offence in respect of which he or she has been transferred to the executing state, or

(c) obtains a declaration under section 2 of the Criminal Procedure Act 1993 that there has been a miscarriage of justice in relation to his or her conviction for the offence in respect of which he or she has been transferred to the executing state,

the Minister shall immediately notify the competent authority of the executing state to which the judgment imposing a sentence in respect of the offence has been forwarded of that fact.

PART 3

State as executing state

Interpretation (*Part 3*)

30. (1) In this Part—

"application", other than in *sections 36(1)*, *40* and *46*, has the meaning assigned to it by *section 37(1)*;

"committal order" means an order under *section 43(1)* or *(2)*;

"deductible period", in relation to a sentenced person, means—

(a) the period spent by the person in custody in the State—

(i) on foot of a warrant issued under *section 35(1)*, or

(ii) on foot of a warrant issued under *section 42(1)(a)* or *(b)* awaiting the making of an order under *section 43(2)*,

and

(b) the period (if any) of the sentence indicated by an issuing 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 issuing 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 the issuing state;

"forward", in relation to a judgment, means to forward the judgment in accordance with *section 34(1)*;

"partial recognition and enforcement" has the meaning assigned to it by *section 39(1)*;

"*section 34* certificate" has the meaning assigned to it by *section 34(5)(a)*.

(2) Nothing in this Part shall operate to prejudice an application under section 23(1)(a) of the Act of 2019 for the recognition of a judgment (within the meaning of Framework Decision 2008/947/JHA) and, where applicable, the probation decision (within the meaning of Framework Decision 2008/947/JHA) to which the judgment relates under section 24 of that Act.

(3) The granting by the appropriate court of an application for the recognition of a judgment and the making of an order for the enforcement of the sentence to which the judgment relates, the execution of part of which has been conditionally suspended upon its imposition in an issuing state, shall not operate to prejudice the continued enforcement by the issuing state of that part of the sentence that has been conditionally suspended.

(4) Where under *section 39(4)* the appropriate court (with the consent of the competent authority of the issuing state) treats an application as an application in respect of the enforcement in the State of part of a sentence imposed in an issuing state, a reference in this Part to a sentence shall be treated as reference to that part of the sentence.

Corresponding offences

31. For the purposes of this Part, an offence under the law of the issuing state corresponds to an offence under the law of the State where the act or omission constituting the offence under the law of the issuing state would, if committed in the State, constitute an offence under the law of the State.

Consent to forwarding judgment

32. (1) Where a sentenced person is a person other than—

(a) an Irish citizen living in the State, or

(b) an Irish citizen who, upon release from the enforcement of a sentence in an issuing state will be sent to the State in accordance with an order included in, or ancillary to, the judgment,

a judgment in relation to him or her shall not be forwarded unless the competent authority of the issuing state, prior to forwarding the judgment, has obtained the consent of the Minister.

(2) The Minister may give his or her consent under *subsection (1)* where—

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

(b) the Minister is satisfied that the enforcement of the sentence in the State would facilitate the sentenced person's social rehabilitation and successful reintegration into society having regard to the matters referred to in *subparagraphs (i)*, *(ii)* and *(iii)* of *section 16(2)(c)*, and

(c) the Minister is of the opinion, having regard to such factors as he or she considers relevant, that it is appropriate that such consent be given.

Provision of reasoned opinion to issuing state

33. (1) The Minister may provide a reasoned opinion in respect of a sentenced person, to the competent authority of an issuing state—

(a) where the Minister has been consulted by the issuing state, before a judgment in relation to the person is forwarded, or

(b) where the Minister has not been consulted by the issuing state, after a judgment in relation to the person is forwarded.

(2) Where the Minister is considering providing a reasoned opinion under *subsection (1)*, he or she shall have regard to such opinion (if any) of the sentenced person as the Minister is notified of by the competent authority of the issuing state.

(3) In this section, "reasoned opinion" means a reasoned opinion of the Minister that the enforcement in the State of a sentence imposed in an issuing state would not facilitate the social rehabilitation and successful reintegration of the sentenced person into society.

Forwarding of judgment to Minister

34. (1)*Subsection (5)* applies if the competent authority of an issuing state, subject to *section 32(1)*, forwards to the Minister—

(a) a judgment to which a sentence relates, and

(b) a Framework Decision Certificate in the Irish language or the English language in respect of the judgment referred to in *paragraph (a)*.

(2) The Minister may, on his or her own initiative or at the request by, or on behalf of, a sentenced person, request an issuing state to forward a judgment.

(3) Where the Minister receives a Framework Decision Certificate that—

(a) is incomplete, or

(b) manifestly does not correspond to the judgment to which it relates,

the Minister shall as soon as practicable notify the competent authority of the issuing state of the matter referred to in *paragraph (a)* or *(b)*, as the case may be, and specify a reasonable period of time within which the competent authority may complete or correct the Framework Decision Certificate.

(4) Where the Minister is of the opinion that the content of a Framework Decision Certificate received by him or her is not sufficient to enable the Minister to make an application in respect of the judgment to which the Certificate relates, he or she shall arrange for the judgment accompanying

the Certificate to be translated into the Irish language or the English language.

(5) Where the competent authority of an issuing state forwards a judgment and a Framework Decision Certificate in respect of the judgment and the Minister is satisfied that the requirements of *subsections (3)* and *(4)* are satisfied, he or she shall—

(a) certify in writing (in this Part referred to as a "*section 34* certificate") that the judgment and Framework Decision Certificate have been duly forwarded and those requirements have been satisfied,

(b) where the sentenced person is in the State, make all reasonable efforts to notify him or her that the judgment and Framework Decision Certificate have been forwarded, and

(c) make an application in respect of the judgment.

(6) *section 34* certificate shall, unless the contrary is shown, be evidence in any proceedings of the matters specified therein without further proof.

(7) Where a court or person employed by, or acting for or on behalf of, the public administration of the State receives a judgment and a Framework Decision Certificate in respect of the judgment 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 judgment and the Framework Decision Certificate to the Minister, 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.

(8) For the purposes of this Part, the sending of a judgment and Framework Decision Certificate to the Minister under *subsection (7)(a)* shall be deemed to constitute the forwarding of the documents.

Provisional arrest where sentenced person in State

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

(a) the sentenced person is in the State,

(b) a request in writing for the provisional arrest of the sentenced person has been made on behalf of an issuing state,

(c) the request referred to in *paragraph (b)* was received by the Minister before—

(i) the receipt by the Minister of the documents referred to in *section 34(1)*, or

(ii) after the receipt by the Minister of the documents referred to in *section 34(1)* but before a decision by the appropriate court to grant or refuse an application for the recognition of the judgment to which the request relates,

and

(d) the request referred to in *paragraph (b)* is in accordance with *subsection (2)(a)* or *(b)*, as the case may be.

(2) The Minister, in considering whether to give his or her consent under *subsection (1)*—

(a) where *paragraph (c)(i)* of that subsection applies, shall have regard to—

(i) whether the issuing state intends to forward the documents referred to in *section 34(1)* without delay, and

(ii) whether the request states—

(I) the name and date of birth of the sentenced person concerned,

(II) where known, the address of the place in the State at which the sentenced person is for the time being residing,

(III) the nature of the offence, the circumstances in which the offence was committed and the time at which, and place where, the offence was committed,

(IV) the nature, duration and date of commencement of the sentence (or, where the sentenced person fled, or otherwise returned, to the State before he or she began serving the sentence, the date on which the sentence should have commenced) in relation to which a judgment has been, or is to be, forwarded, and

(V) where the sentenced person fled, or otherwise returned, to the State after having served part of the sentence but before he or she had completed serving the sentence, the period of the sentence that he or she served,

and

(b) where *paragraph (c)(ii)* of that subsection applies, shall have regard to the following matters—

(i) whether the request was accompanied by the Framework Decision Certificate that has been forwarded in respect of the sentenced person, and

(ii) where such information is not contained in the Framework Decision Certificate, whether the request contains the information referred to in *paragraph (a)(ii)*.

(3) A warrant issued under *subsection (1)* may be executed by any member of the Garda Síochána in any part of the State and may be so executed notwithstanding that it is not in the possession of the member when he or she executes the warrant, and the warrant shall be shown to and a copy thereof given to the sentenced person arrested at the time of his or her arrest or, if the warrant is not then in the possession of the member, not later than 24 hours after his or her arrest.

(4) For the purpose of arresting a sentenced person on foot of a warrant issued under *subsection (1)*, a member of the Garda Síochána may enter, if need be by use of reasonable force, and search a place where the member, with reasonable cause, suspects the sentenced person to be.

(5) A person arrested under a warrant issued under *subsection (1)* shall, as soon as may be after his or her arrest, be brought before the appropriate court and the court shall, unless the *section 34* certificate is produced to the court, remand the person in custody or on bail for a period not exceeding 18 days pending the production to it of that certificate.

(6) If a *section 34* certificate is not produced in accordance with *subsection (5)* before the expiration of the period of 18 days from the date on which

the person is arrested under a warrant issued under *subsection (1)*, the person concerned shall be released from custody or the terms of his or her bail forthwith.

(7) Where the documents referred to in *section 34(1)*, in relation to a person who has been released in accordance with *subsection (6)*, are forwarded to the Minister, an application may be made to the appropriate court.

(8) Where a warrant authorising the arrest of a sentenced person is issued under this section and a *section 34* certificate has been produced to the appropriate court, then in any subsequent proceedings it shall be presumed, unless the contrary is shown, that a judgment in relation to the person has been duly forwarded to the Minister.

Power of adjournment and remand

36. (1) The appropriate court may, if it considers it appropriate to do so in the interests of justice, adjourn any proceedings under this Part either on application or of its own motion, and shall, subject to *subsection (2)*, remand the person concerned in custody for the period of the adjournment or such other period as it considers appropriate.

(2) A person arrested under a warrant issued under *section 35(1)* may be remanded in custody or on bail.

(3) For the purposes of this section, the appropriate court shall have and may exercise the same powers of remand in relation to any person appearing before it under this Part as it would have if the person were brought before it charged with an indictable offence.

Application for recognition and enforcement

37. (1) The Minister shall apply, or cause an application to be made, to the appropriate court as soon as practicable after a *section 34* certificate is issued, for recognition of the judgment in the State and enforcement of the sentence (in its legal nature and duration) to which the judgment relates (in this Part referred to as an "application").

(2) An application may be made *ex parte* save in a case in which a court directs that it is in the interests of justice that it be made on notice to the sentenced person.

(3) The appropriate court shall determine an application in accordance with this Part.

(4) A decision under *subsection (1)* by an appropriate court regarding whether to grant or refuse an application shall be taken as soon as practicable and, subject to subsectionn *(5)* and *(6)*, in any event not later than 90 days from the date on which the judgment and Framework Decision Certificate, to which the application relates, were forwarded to the Minister.

(5) The period referred to in *subsection (4)* shall—

(a) where *section 34(3)* applies, be extended by a period equivalent to the period taken by the competent authority of an issuing state to complete or correct the Framework Decision Certificate as referred to in a notification under that section,

(b) where *section 34(4)* applies, be extended by a period equivalent to the period taken by the Minister to obtain a translation of the judgment to which the Framework Decision Certificate relates,

(c) where *subsection (2)* applies, be extended by a period equivalent to the period for which an application may be adjourned to permit it to be made on notice to a sentenced person,

(d) where *section 38(2)* applies, be extended by a period equivalent to the period taken by the competent authority of an issuing state to provide the documentation or information referred to in that section, or

(e) where *section 40(2)* applies, be extended by a period equivalent to the period for which an application may be adjourned to permit it to be made on notice to a sentenced person.

(6) S*ubsection (4)* shall not apply where, for exceptional reasons, it is not practicable for the period of time specified in that subsection to be complied with.

(7) Where an appropriate court makes a decision under *subsection (1)* to grant an application, the court shall take all such measures as are necessary to enforce the sentence and, in particular, may make an order under *section 40(3)* or *(5)* adapting the sentence.

Grounds for refusal to recognise and enforce

38. (1) The appropriate court may, subject to *section 39(1)*, refuse to grant an application where—

(a) subject to *subsection (2)*, the sentenced person is not in the issuing state or the State,

(b) subject to *subsection (2)*, the sentenced person has not, as required under the law of the issuing state, given his or her consent to the application or he or she having so consented has withdrawn his or her consent,

(c) subject to *subsection (2)*, none of the following criteria are met—

(i) the sentenced person is an Irish citizen living in the State,

(ii) the sentenced person is an Irish citizen in the issuing state who will be returned to the State upon release from the enforcement of the sentence to which the judgment relates in accordance with an order included in, or ancillary to, the judgment, or

(iii) the Minister has given his or her consent under *section 32(1)*,

(d) subject to *subsection (2)*, the enforcement of the sentence in the State would be contrary to the principle of *ne bis in idem*,

(e) subject to *subsection (3)*, the offence in respect of which the sentence is imposed does not correspond to an offence under the law of the State,

(f) the sentenced person, by virtue of any Act of the Oireachtas, is, under the law of the State, immune from prosecution for an offence consisting of an act or omission that constitutes, whether in whole or in part, the offence to which the judgment relates,

(g) the offence under the law of the issuing state to which the judgment relates corresponds to an offence under the law of the State in respect of which a person of the same age as the sentenced person could not be proceeded against by reason of his or her age at the time of the offence,

(h) subject to *subsection (5)*, at the time of the forwarding of the judgment the term of the sentence concerned is F1**[**less than**]** 6 months or, where

the sentenced person has already served part of the sentence concerned, there is F1**[**less than**]** 6 months of the sentence remaining to be served,

(i) subject to *subsection (2)*, according to the Framework Decision Certificate, he or she did not appear in person at the trial resulting in the judgment and sentence in respect of which the Framework Decision Certificate was forwarded, unless the Certificate states that, in accordance with further such procedural requirements as may be required by the law of the issuing state—

(i) the person in due time was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial,

(ii) the person was not summoned in person but in due time by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial,

(iii) the person, being aware of the scheduled trial, had given a mandate to a legal representative, who was either appointed by the person concerned or by the issuing state, to defend him or her at the trial, and was indeed defended by that representative at the trial, or

(iv) the person was served with the decision and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and the person—

(I) expressly stated that he or she does not contest this decision, or

(II) did not request a retrial or appeal within the applicable time frame,

(j) *section 39(1)* applies and the competent authority of the issuing state has refused to provide its consent to a proposed partial recognition and enforcement,

(k) subject to *subsection (2)*, the judgment provides for medical or therapeutic treatment which, notwithstanding *section 40*, it would be impossible or impracticable for the State to provide or supervise,

(l) subject to *subsection (2)*, if, in exceptional circumstances and having regard to the specific circumstances and whether a major or essential part of the offence to which the judgment relates was committed in the issuing state, the judgment relates to an offence the major or essential part of which under the law of the State is regarded as having been committed wholly or for a major or essential part within the State,

(m) the competent authority of the issuing state has refused, in response to a request issued under *section 47(3)*, to provide its consent under that section, or

(n) there are reasonable grounds for believing that—

(i) the sentence was imposed on the sentenced person for the purposes of punishing him or her on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, or

(ii) such recognition may prejudice the sentenced person's position for any of the reasons referred to in *subparagraph (i)*.

(2) Where *paragraph (a)*, *(b)*, *(c)*, *(d)*, *(i)*, *(k)* or *(l)* of *subsection (1)* applies, the appropriate court may, before refusing to grant an application, request the competent authority of the issuing state to provide such additional documentation or information (if any) as the appropriate court may specify and the Minister shall notify the competent authority concerned of any such request.

(3) The appropriate court shall not refuse to grant an application in relation to a revenue offence, on the ground that—

(a) no tax or duty of the kind to which the offence relates is imposed in the State, or

(b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.

(4) The appropriate court shall not refuse to grant an application where the court is satisfied that no injustice would be caused to the sentenced person even if—

(a) there is a defect, or an omission of a non-substantial detail, in the Framework Decision Certificate or any accompanying document grounding the application,

(b) there is a variance between any such document and such evidence as may be adduced so long as the court is satisfied that the variance is explained by the evidence, or

(c) there has been a technical failure to comply with a provision of this Act, so long as the court is satisfied that the failure does not impinge on the merits of the application.

(5) In deciding whether to refuse to grant an application in relation to a sentenced person to whom *subsection (1)(h)* applies, the appropriate court shall consider whether exceptional circumstances exist that warrant the person serving the sentence or remainder of the sentence, as the case may be, in the State.

(6) In this section, "revenue offence" means an offence in connection with taxes, duties, customs or exchange control.

Annotations

Amendments:

F1 Substituted (23.07.2024) by *Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024* (30/2024), s. 26, commenced on enactment.

Partial recognition and enforcement

39. (1) Before refusing to grant an application for the recognition of a judgment in the State and enforcement of the sentence in whole, the appropriate court shall, subject to *subsection (2)*, consider recognition of the judgment and enforcement of the sentence in part (in this Part referred to as "partial recognition and enforcement").

(2) The appropriate court may not recognise a judgment and enforce a sentence in part where to do so aggravates the duration of the sentence to which the judgment relates.

(3) Where the appropriate court is considering partial recognition and enforcement, the Minister shall obtain the views of the competent authority of the issuing state in relation to the proposed partial recognition and enforcement.

(4) Where the competent authority of an issuing state consents to a proposed partial recognition and enforcement, the appropriate court may treat an application as an application in relation to the recognition in the State of part of the judgment to which the consent relates and where it does so treat of an application the court shall—

(a) take all such measures as are necessary for the enforcement of the sentence, including making an order under *section 40(3)* or *(5)* adapting the sentence, and

(b) issue a warrant under *section 42(1)(a)* or *(b)* and a committal order for the purpose of enforcement in the State of the part of the sentence imposed in the issuing state to which the consent relates.

Adaptation

40. (1) An appropriate court, on the application by or on behalf of the Minister (whether as part of an application under *section 37(1)* or at any other time) or of its own motion, may 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 appropriate 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 issuing state is by its legal nature incompatible with the law of the State, the appropriate 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 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.

(5) Where the sentence imposed in the issuing state is by its duration incompatible with the law of the State, the appropriate 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 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.

(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)*.

(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 35(1)*, *42(1)(a)* or*(b)* or a committal order notwithstanding that an application is made under *subsection (1)* for an order under *subsection (3)* or *(5)* 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 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.

Enforcement of sentence in respect of fewer offences

41. Where a sentence to be enforced in the State is in respect of fewer offences than that for which it was imposed in an issuing state—

(a) by virtue of the partial recognition and enforcement of the sentence, or

(b) by virtue of the adaptation of the sentence by an order under *section 40(3)* or *(5)*,

the partial recognition and enforcement or adaptation, as the case may be, shall not be deemed to constitute an aggravation of the nature or duration of the sentence.

Warrant on foot of recognition

42. (1) Where an appropriate court grants an application, the court shall—

(a) in the case of a sentenced person in the State, other than a person to whom *section 43(1)* applies, issue a warrant for the purpose of enforcement of the sentence authorising—

(i) where the person is not in custody, the arrest of the person, and

(ii) the taking of the person to, and his or her detention in, a place of detention to await the order of the appropriate court under *section 43(2)*,

and

(b) in the case of a sentenced person in the issuing state, issue a warrant for the purpose of enforcement of the sentence authorising—

(i) the bringing of the person into the State from a place outside the State, and

(ii) the taking of the person to, and his or her detention in, a place of detention to await the order of the appropriate court under *section 43(2)*.

(2) A warrant authorising the arrest of a person issued under *subsection (1)(a)* may be executed by any member of the Garda Síochána in any part of the State and may be so executed notwithstanding that it is not in the possession of the member when he or she executes the warrant, and the warrant shall be shown to and a copy thereof given to the person arrested at the time of his or her arrest or, if the warrant is not then in the possession of the member, not later than 24 hours after his or her arrest.

(3) For the purpose of arresting a sentenced person on foot of a warrant issued under *subsection (1)(a)*, a member of the Garda Síochána may enter, if need be by use of reasonable force, and search a place where the member, with reasonable cause, suspects the sentenced person to be.

(4) Where a person has been arrested under a warrant issued under *subsection (1)(a)*, then in any subsequent proceedings it shall be presumed, unless the contrary is shown, that a judgment has been duly forwarded to the Minister.

Committal order

43. (1) Upon the grant by an appropriate court of an application in respect of a sentenced person in the State—

(a) brought before the court under *subsection (5)* of *section 35* at the same time as the *section 34* certificate is produced in accordance with that subsection,

(b) before the court, by reason of having been remanded under *section 36*, at the same time as, or at any time after, the *section 34* certificate is produced in accordance with *section 35(5)*, or

(c) before the court by reason of his or her being put on notice under *section 37(2)* of the application,

the court shall make an order for the purpose of enforcement of the sentence committing the sentenced person to a place of detention.

(2) The appropriate court shall, on application by or on behalf of the Minister, in respect of a sentenced person who is—

(a) arrested under a warrant issued under *section 42(1)(a)*, or

(b) brought into the State under a warrant issued under *section 42(1)(b)*,

make an order for the purpose of enforcement of the sentence, not later than 21 days after the sentenced person is arrested or brought into the State, as the case may be, committing the sentenced person to a place of detention.

(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.

(4) Where, for any reason, the appropriate court is unable to make an order under *subsection (2)* within the period referred to in that subsection, the period may be extended by such reasonable period as may be required by the court for that purpose.

(5) A sentenced person may continue to be detained or otherwise restricted in his or her personal liberty pursuant to a warrant issued under *section 42(1)(a)* or *(b)*, as the case may be, notwithstanding that the period referred to in *subsection (2)* is extended under *subsection (4)*.

(6) The period for which a sentenced person may be committed to a place of detention in a committal order shall, subject to *subsection (7)*, be a period equal to—

(a) in the case of a person who served part of the sentence concerned (including where the sentence is adapted in accordance with *section 40(3)* or *(5)* or both), the period of the sentence less—

(i) the period of the sentence actually served by the person in the issuing state, and

(ii) the deductible period,

or

(b) in the case of any other person, the period of the sentence (including where the sentence is adapted in accordance with *section 40(3)* or *(5)* or both) less the deductible period.

(7) In determining the period for which a sentenced person may be committed to a place of detention in a committal order—

(a) the appropriate court shall not have regard to the provisions of law of the issuing state under which the sentenced person is entitled to early or conditional release, and

(b) where by operation of law of the issuing 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 appropriate 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.

(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.

(9) Notwithstanding *subsection (6)*, 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 issuing state.

Effect of committal order

44. (1) Subject to *subsections (3)* and *(4)* and *section 40*, the effect of a committal order shall be to authorise the continued enforcement in the State of a sentence (in its legal nature and duration) imposed in an issuing 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 as a result of the recognition of the judgment to which it relates—

(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 Act of 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 35(1)*, *42(1)(a)* or *(b)* 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 35(1)*, *42(1)(a)* or *(b)* 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 issuing state.

(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.

Operation of warrants and orders

45. Where a warrant under *section 35(1)*, *42(1)(a)* or *(b)* is issued or a committal order is made in respect of a sentenced person, the following provisions shall have effect:

(a) the sentenced person shall be deemed to be in legal custody at any time when he or she is being taken under the warrant or order to or from any place or being kept in custody under the warrant or order and, if the person escapes, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody;

(b) the Minister may designate any person as a person who is for the time being authorised to take the sentenced person concerned to or from any place under the warrant or order or to keep the person in custody under the warrant or order;

(c) a person designated pursuant to *paragraph (b)* to take the sentenced person to or from any place or to keep him or her in custody shall, while

so taking or keeping the sentenced person, have all the powers, authority, protection and privileges of a member of the Garda Síochána.

Revocation and variation of warrants and orders

46. (1) The Minister may at any time (including as part of an application under *section 40*) apply to the appropriate court for an order revoking, or varying the terms of, a warrant issued under *section 35(1)*, *42(1)(a)* or *(b)* 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 appropriate 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 the Framework Decision and this Act.

Rule of specialty (*Part 3*)

47. (1) This section applies to a sentenced person who has been transferred to the State under this Part.

(2) A person to whom this section applies shall not be proceeded against, sentenced or detained for the purpose of enforcing a sentence (other than the sentence for which he or she was transferred), or otherwise restricted in his or her personal liberty in respect of an offence except in the following cases—

(a) where a period of at least 45 days has expired from the date of his or her final discharge in respect of the sentence for which he or she was transferred and during such period being free to leave the State—

(i) he or she remains in the State, or

(ii) he or she, having left the State, returns thereto (whether during that period or later),

(b) where upon conviction in respect of the offence concerned he or she is not liable to a term of imprisonment or detention or a penalty consisting of a restriction in his or her personal liberty,

(c) where upon conviction in respect of the offence concerned he or she is liable to a penalty (other than a penalty referred to in *paragraph (b)*), including a financial penalty, notwithstanding that where he or she fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure to comply with any requirements of which the penalty consists) he or she may be liable to a term of imprisonment or detention or a penalty consisting of a restriction in his or her personal liberty,

(d) where he or she consented to the transfer,

(e) where after the transfer he or she voluntarily and before the appropriate court gives his or her consent to being so proceeded against, to such a penalty being imposed, or being so detained or restricted in his or her personal liberty, and is fully aware of the consequences of so doing and he or she obtained or was afforded the opportunity of obtaining, or being provided with, professional legal advice in relation to the matters to which this section relates before he or she gives that consent, or

(f) with the consent of the competent authority of the issuing state, in response to a request.

(3) The appropriate court may, upon an application made by or on behalf of the Director of Public Prosecutions, where the court is satisfied that—

(a) a domestic warrant has been issued for the arrest of the person but has not been executed, and

(b) a term of imprisonment or detention has been imposed on the person in respect of the offence concerned and the person is required to serve all or part of that term of imprisonment or detention, or, as the case may be, the person would, if convicted of the offence concerned, be liable to a term of imprisonment or detention,

issue a request, in accordance with *subsection (4)*, in respect of a sentenced person who has been transferred to the State, for the consent of the competent authority of the issuing state to—

(i) the bringing of proceedings against the person in the State in respect of the offence to which the warrant relates,

(ii) the enforcement of a sentence or order of detention in respect of the offence to which the warrant relates, or

(iii) the imposition in the State of the term of imprisonment or detention, as the case may be, in respect of the offence to which the warrant relates.

(4) A request shall specify—

(a) the name and nationality of the sentenced person to whom it relates,

(b) the name, address, fax number (if any) and email address of the relevant court office that issued the domestic warrant to which the request relates,

(c) the offence to which the request relates including a description thereof,

(d) that a conviction or sentence is immediately enforceable against the sentenced person, or that a warrant for his or her arrest has been issued in respect of that offence,

(e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the sentenced person in the commission of the offence, and

(f) (i) the penalties to which the sentenced person would, if convicted of the offence be liable,

(ii) where the sentenced person has been convicted of the offence and a sentence has been imposed in respect thereof, the penalties of which that sentence consists, and

(iii) where the sentenced person has been convicted of the offence specified therein but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence.

(5) The Minister shall—

(a) forward a request to the competent authority of the issuing state, and

(b) provide the competent authority of the issuing state to which a request is forwarded with a translation of the request in a relevant language of the issuing state.

(6) In this section—

"domestic warrant" means a warrant (other than a warrant issued under *section 35(1)* or *section 42(1)*) issued for the arrest of a person by a court in the State;

"offence" means, in relation to a sentenced person, an offence (other than an offence in respect of which he or she has been transferred to the State to serve the sentence in relation to) under the law of the State committed before his or her transfer to the State;

"relevant court office", in respect of a domestic warrant, means—

(a) where the domestic warrant was issued by the District Court, the District Court Office for the district in which the court was sitting when it issued the warrant,

(b) where the domestic warrant was issued by the Circuit Court, the Circuit Court Office of the county in which the court was sitting when it issued the warrant,

(c) where the domestic warrant was issued by the High Court, the Central Office of that court, and

(d) where the domestic warrant was issued by the Special Criminal Court, the Registrar of that court;

"request" means a request issued by the appropriate court under *subsection (3)*.

Transfer to State of enforcement of sentence

48. (1) Subject to *subsection (2)*, the enforcement of a sentence shall be governed by the law of the State—

(a) where the sentenced person is in the State and he or she is a person to whom *section 43(1)* applies, from the date of the making of an order under that section,

(b) where the sentenced person is a person in respect of whom a warrant under *section 42(1)(a)* has been issued, from the date of the issuing of the warrant, and

(c) where the sentenced person is in the issuing 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 42(1)(b)*.

(2) Where a sentenced person escapes from custody and has not been retaken, the enforcement of the sentence shall revert to the issuing state upon receipt by the competent authority of an issuing state of notification by the Minister under *paragraph (j)* of *section 50*.

Cessation of enforcement of sentence by State

49. (1) The enforcement of a sentence in the State shall cease where—

(a) a sentenced person is granted a pardon, under Article 13. 6 of the Constitution, in respect of an offence consisting of an act or omission

that constitutes in whole or in part the offence in respect of which he or she has been transferred to the State,

(b) a sentenced person has, by virtue of any Act of the Oireachtas, become immune from prosecution or punishment for an offence consisting of an act or omission that constitutes in whole or in part the offence in respect of which he or she has been transferred to the State, or

(c) the Minister is notified by the competent authority of an issuing state that in respect of a sentenced person transferred to the State from the issuing state—

(i) he or she has in accordance with the law of the issuing state, become immune, by virtue or any amnesty or pardon, from prosecution or punishment in the issuing state for the offence in respect of which he or she has been transferred to the State and the sentence in respect of his or her transfer has ceased to be enforceable in that state immediately or from such date as is contained in the notification, or

(ii) a decision has been taken by the issuing state on an application for review of the judgment imposing sentence and the sentence in respect of his or her transfer has ceased to be enforceable in that state immediately or from such date as is contained in the notification.

(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—

(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, and

(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 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 that *paragraph (a)* or *(b)* applies or that a notification under *paragraph (c)* of that subsection has been received, be released from custody or other detention forthwith or in the case of *paragraph (c)* of that subsection, on such later date as may be specified in the notification under that paragraph.

(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.

Information to be given by Minister to competent authority of issuing state

50. The Minister shall without delay notify the competent authority of an issuing state of the following matters:

(a) his or her decision to grant or refuse to grant consent under *section 32*;

(b) where a judgment is sent to a person other than the Minister by the competent authority of the issuing state, that the judgment has been transmitted to the Minister;

(c) where, after a judgment is forwarded, a sentenced person to whom the judgment relates cannot be found in the State, that the sentenced person cannot be found;

(d) a decision (including any reasons that may be provided) by the appropriate court to refuse an application on the grounds of any paragraph of *section 38(1)*;

(e) where *subsection (4)* of *section 37* does not apply by virtue of *subsection (6)* of that section—

(i) the exceptional reasons for which it is not practicable to comply with the period of time specified in that *subsection (4)*, and

(ii) an estimate of the period of time required for a decision in respect of the application to be made;

(f) an order (including any reasons that may be provided) by the appropriate court adapting a sentence under *section 40(3)* or *(5)*;

(g) that the enforcement of a sentence has ceased in accordance with *paragraph (a)* or *(b)* of *section 49(1)*;

(h) upon request of the competent authority of an issuing state, the law of the State regarding early or conditional release as it relates to the sentenced person concerned;

(i) where so indicated in the Framework Decision Certificate, the beginning and end of the period of conditional release of the sentenced person;

(j) of the escape from custody or other detention of a sentenced person;

(k) of the completion of the enforcement of the sentence.

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".

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.".

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".

PART 7

Miscellaneous

Identification procedures

72. (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 and for no other purpose—

(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 on the authority of 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—

(a) of that intention, and

(b) that an authorisation to do so has been given pursuant to *subsection (5)*.

(8) Every 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 every fingerprint, palm print or photograph pursuant to *subsection (4)* shall be recorded by electronic or similar means.

(10) Every 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 within the period of 12 months from the date of the taking of the fingerprint, palm print or photograph, as the case may be, or on the expiry of the sentence of imprisonment imposed on the person to which an application (within the meaning of *Part 2* or *3* applies) relates, whichever occurs later.

(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 to both.

(12) Where a fingerprint, palm print or photograph of a person to whom a warrant issued under *section 22(1)*, *35(1)* or *42(1)* relates is transmitted by or on behalf of a competent authority of an issuing state or executing state, such fingerprint, palm print or photograph shall be received in evidence without further proof.

Transit

73. (1) Transit through the State of a sentenced person (in this section referred to as a "transferee") being transferred from an issuing state to an executing state shall be permitted where the Minister receives a request in that behalf from the issuing state and where the issuing state provides the Minister with the following:

(a) a certified copy of the Framework Decision Certificate in respect of the request concerned;

(b) upon request of the Minister, a translation of the Certificate referred to in *paragraph (a)* in the English language.

(2) The Minister may require an issuing state that has made a request under subsection *(1)* to provide such information in respect of the circumstances

of the transit or transfer of the person concerned as the Minister considers to be necessary or expedient.

(3) Where, at the time of receipt of a request under this section, there is in the State a warrant for the arrest of, or a prosecution pending against, the transferee in respect of a criminal offence committed or a sentence imposed before the departure of the transferee from the issuing state which may result in him or her being detained or otherwise restricted in his or her personal liberty while in the State, the Minister shall notify the issuing state of the warrant or the prosecution, as the case may be.

(4) The Minister shall, within 1 week of receipt of a request in accordance with *subsection (1)*, grant permission under that subsection.

(5) The Minister may arrange for the supervision of the transit of a transferee through the State by members of the Garda Síochána and the transferee shall be deemed to be in the custody of any member of the Garda Síochána accompanying him or her pursuant to such arrangement.

(6) (a) This subsection applies to an aircraft that has taken off from a place (other than the State) and that is scheduled to land in a place (other than the State) and on board which there is a transferee.

(b) Where an aircraft to which this subsection applies lands (for whatever reason) in the State, the issuing state shall, upon its landing or within 72 hours of such landing, provide the Minister with the documentation referred to in subsection *(1)*.

(c) While an aircraft to which this subsection applies is in the State, a transferee who is on board that aircraft shall be deemed to be in transit through the State and *subsection (5)* shall apply accordingly.

(7) Where a sentenced person is being transferred to an executing state in accordance with *section 23* and the transfer involves the transit through the territory of a Member State (in this section referred to as a "specified Member State") other than the executing State, the Minister shall request the specified Member State to permit the transit and provide that Member State with the following:

(a) a certified copy of the Framework Decision Certificate in respect of the request concerned;

(b) upon request of the specified Member State, a translation of the Certificate referred to in *paragraph (a)* in a relevant language.

(8) The Minister may withdraw a request under *subsection (7)* where the specified Member State has notified the Minister that there is in the specified Member State a warrant for the arrest of, or a prosecution pending against, the sentenced person in respect of a criminal offence committed or a sentence imposed before the departure of the person from the State which may result in him or her being detained or otherwise restricted in his or her personal liberty while in the specified Member State.

Amendment of section 151 of Children Act 2001

74. 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".

Amendment of Act of 2003

75. 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*.".

Amendment of section 25 of Criminal Justice Act 2007

76. 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".

Amendment of Criminal Justice (Mutual Assistance) Act 2008

77. Section 65(1)(b) of the Criminal Justice (Mutual Assistance) Act 2008 is amended by the insertion of "or under *section 22* (transfer warrant for removal of sentenced person from State) of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*" after "the Transfer of Sentenced Persons Act 1995".

Amendment of Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

78. (1) Section 31 of the Act of 2014 is amended—

(a) in subsection (1)(c)(ii)—

(i) in clause (I), by the deletion of "or" where it lastly occurs,

(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",

and

(b) in subsection (14), in paragraph (b) of the definition of "the expiry of the sentence"—

(i) 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 "determined by the High Court",

(ii) in subparagraph (i), by the deletion of "or" where it lastly occurs,

(iii) in subparagraph (ii), by the substitution of "Transfer of Execution of Sentences Act 2005, or" for "Transfer of Execution of Sentences Act 2005,", and

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

"(iii) on his or her transfer to the State and detention in a place of detention in the State under *Part 3* of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*,".

(2) Section 32 of the Act of 2014 is amended—

(a) in subsection (1)(c)(ii)—

(i) in clause (I), by the deletion of "or" where it lastly occurs,

(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",

and

(b) in subsection (15), in paragraph (b) of the definition of "the expiry of the sentence"—

(i) 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 "determined by the High Court",

(ii) in subparagraph (i), by the deletion of "or" where it lastly occurs,

(iii) in subparagraph (ii), by the substitution of "Transfer of Execution of Sentences Act 2005, or" for "Transfer of Execution of Sentences Act 2005,", and

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

"(iii) on his or her transfer to the State and detention in a place of detention in the State under *Part 3* of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*,".

(3) Section 33(10) of the Act of 2014 is amended, in paragraph (b) of the definition of "the expiry of the sentence"—

(a) 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 "determined by the High Court",

(b) in subparagraph (i), by the deletion of "or" where it lastly occurs,

(c) in subparagraph (ii), by the substitution of "Transfer of Sentenced Persons Act 1995, or" for "Transfer of Sentenced Persons Act 1995,", and

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

"(iii) on his or her transfer to the State and detention in a place of detention in the State under *Part 3* of the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*,".

(4) In this section, "Act of 2014" means the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.

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

79. 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".

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

80. 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):

"(iiia) 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".

Amendment of Parole Act 2019

81. 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 (e)(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.".

Amendment of Act of 2019

82. Section 3 of the Act of 2019 is amended—

(a) by designating the section as subsection (1), and

(b) by the insertion of the following subsections after subsection (1):

"(2) Nothing in this Act shall operate to prejudice—

(a) the power of the Minister under *Part 2* of the *Act of 2023* to forward a judgment (within the meaning of that Act) to the competent authority of an executing state (within the meaning of that Act), and

(b) the power of the Minister to make an application under *Part 3* of the *Act of 2023* in respect of a judgment (within the meaning of that Act).

(3) In this section, '*Act of 2023*' means the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*.".

Amendment of Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020

83. Section 22 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 is amended in the definition of "relevant proceedings"—

(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*,".

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

84. 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.".

Declaration of state to be Member State

85. The Minister may, by order, made following consultation with the Minister for Foreign Affairs, declare a state, other than a state referred to in *paragraph (a)* of the definition of "Member State" in *section 2(1)*, to be a Member State for the purposes of *paragraph (b)* of that definition, where he or she is satisfied that the state has, by agreement concluded by the state with the European Union, agreed to implement and apply—

(a) the Framework Decision, or

(b) an act or measure taken by the European Union amending or building upon the Framework Decision.

Transitional provision

86. Where, before the date on which *Parts 1* to *3* come into operation—

(a) a request was made by the Minister, a sentencing state (within the meaning of the Act of 1995) or a sentencing country (within the meaning of the Act of 2005),

(b) an application was granted by the Minister,

(c) a warrant was issued, or

(d) any other order or step was taken,

under the Act of 1995 or the Act of 2005 in respect of a sentence to which this Act applies, the request, application, warrant, other order or step shall

be deemed to have been made under this Act and this Act shall apply accordingly.

SCHEDULE

Council Framework Decision 2008/909/JHA of 27 November 2008 as amended by Council Framework Decision 2009/299/JHA of 26 February 2009

Section 2

Council Framework Decision 2008/909/JHA

of 27 November 2008

on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

As amended by COUNCIL FRAMEWORK DECISION 2009/299/JHA

of 26 February 2009

amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(1)(a) and 34(2)(b) thereof,

Having regard to the initiative of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(2) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters[(1)], in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).

(3) The Hague Programme on strengthening freedom, security and justice in the European Union[(2)] requires Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.

(4) All the Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to that Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument

[(1)] OJ C 12, 15.1.2001, p. 10.
[(2)] OJ C 53, 3.3.2005, p. 1.

imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.

(5) Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Notwithstanding the need to provide the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.

(6) This Framework Decision should be implemented and applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.

(7) Article 4(1)(c) contains a discretionary provision which enables the judgment and the certificate to be forwarded, for example, to the Member State of nationality of the sentenced person, in cases other than those provided for in paragraphs 1(a) and (b) or to the Member State in which the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence there.

(8) In cases referred to in Article 4(1)(c) the forwarding of the judgment and the certificate to the executing State is subject to consultations between the competent authorities of the issuing and the executing States, and the consent of the competent authority of the executing State. The competent authorities should take into account such elements as, for example, duration of the residence or other links to the executing State. In cases where the sentenced person could be transferred to a Member State and to a third country under national law or inter- national instruments, the competent authorities of the issuing and executing States should, in consultations, consider whether enforcement in the executing State would enhance the aim of social rehabilitation better than enforcement in the third country.

(9) Enforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person, the competent authority of the issuing State should take into account such elements as, for example, the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.

(10) The opinion of the sentenced person referred to in Article 6(3) may be useful mainly in applying Article 4(4). The words 'in particular' are intended to cover also cases where the opinion of the sentenced person would include information which might be of relevance in relation to the grounds for non-recognition and non-enforcement. Provisions of Articles 4(4) and 6(3) do not constitute a ground for refusal on social rehabilitation.

(11) Poland needs more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens

within the Union. For that reason, a temporary derogation of limited scope for a maximum period of five years should be foreseen.

(12) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States[(1)]. This means, *inter alia*, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision 2002/584/JHA.

(13) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds.

(14) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

(15) This Framework Decision should be applied in accordance with the right of citizens of the Union to move and reside freely within the territory of the Member States conferred by Article 18 of the Treaty establishing European Community.

(16) This Framework Decision should be applied in accordance with applicable Community legislation, including in particular Council Directive 2003/86/EC[(2)], Council Directive 2003/109/EC[(3)] and Directive 2004/38/EC of the European Parliament and of the Council[(4)].

(17) Where in this Framework Decision reference is made to the State in which the sentenced person 'lives', this indicates the place to which that person is attached based on habitual residence and on elements such as family, social or professional ties.

(18) When applying Article 5(1), it should be possible to transmit a judgment or a certified copy thereof and a certificate to the competent authority in the executing State by any means which leaves a written record, for example e-mail and fax, under conditions allowing the executing State to establish authenticity.

(19) In cases referred to in Article 9(1)(k), the executing State should consider the possibility of adapting the sentence in accordance with this Framework Decision before it refuses to recognise and enforce the sentence involving a measure other than a custodial sentence.

[(1)] OJ L 190, 18.7.2002, p. 1.
[(2)] OJ L 251, 3. 10.2003, p. 12.
[(3)] OJ L 16, 23.1.2004, p. 44.
[(4)] OJ L 158, 30.4.2004, p. 77.

(20) The ground for refusal provided for in Article 9(1)(k) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence.

(21) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account its purpose. Any decision to apply this ground for refusal, should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing States.

(22) The time limit referred to in Article 12(2) should be implemented by the Member States in such a way that as a general rule, the final decision, including an appeal procedure is completed within a period of 90 days.

(23) Article 18(1) states that, subject to the exceptions listed in paragraph 2, the specialty rule applies only where the person has been transferred to the executing State. It should therefore not be applicable where the person has not been transferred to the executing State, for example where the person has fled to the executing State,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Framework Decision:

(a) 'judgment' shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;

(b) 'sentence' shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;

(c) 'issuing State' shall mean the Member State in which a judgment is delivered;

(d) 'executing State' shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement.

Article 2

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent in accordance with this Framework Decision, when that Member State is the issuing State or the executing State.

2. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 3

Purpose and scope

1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.

2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.

3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties[(1)] and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[(3)].

4. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

CHAPTER II

RECOGNITION OF JUDGMENTS AND ENFORCEMENT OF SENTENCES

Article 4

Criteria for forwarding a judgment and a certificate to another Member State

1. Provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following Member States:

(a) the Member State of nationality of the sentenced person in which he or she lives; or

(b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or

(c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

2. The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.

3. Before forwarding the judgment and the certificate, the competent authority of the issuing State may consult, by any appropriate means, the competent authority of the executing State. Consultation shall be obligatory in the cases referred to in paragraph 1(c). In such cases the competent authority of the executing State shall promptly inform the issuing State of its decision whether or not to consent to the forwarding of the judgment.

[(1)] OJ L 76, 22.3.2005, p. 16.
[(3)] OJ L 328, 24.11.2006, p. 59.

4. During such consultation, the competent authority of the executing State may present the competent authority of the issuing State with a reasoned opinion, that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society.

Where there has been no consultation, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not

5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Framework Decision. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

6. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to paragraph 1(c).

7. Each Member State may, either on adoption of this Framework Decision or later, notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, its prior consent under paragraph 1(c) is not required for the forwarding of the judgment and the certificate:

(a) if the sentenced person lives in and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State, and/or

(b) if the sentenced person is a national of the executing State in cases other than those provided for in paragraph 1(a) and (b).

In cases referred to in point (a), permanent right of residence shall mean that the person concerned:

— has a right of permanent residence in the respective Member State in accordance with the national law implementing Community legislation adopted on the basis of Article 18, 40, 44 and 52 of the Treaty establishing the European Community, or

— possesses a valid residence permit, as a permanent or long-term resident, for the respective Member State, in accordance with the national law implementing Community legislation adopted on the basis of Article 63 of the Treaty establishing the European Community, as regards Member States to which such Community legislation is applicable, or in accordance with national law, as regards Member States to which it is not.

Article 5

Forwarding of the judgment and the certificate

1. The judgment or a certified copy of it, together with the certificate, shall be forwarded, by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

2. The certificate, shall be signed, and its content certified as accurate, by the competent authority of the issuing State.

3. The issuing State shall forward the judgment together with the certificate to only one executing State at any one time.

4. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA[(1)], in order to obtain the information from the executing State

5. When an authority of the executing State which receives a judgment together with a certificate has no competence to recognise it and take the necessary measures for its enforcement, it shall, *ex officio*, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly.

Article 6

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 2, a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person in accordance with the law of the issuing State.

2. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:

(a) to the Member State of nationality in which the sentenced person lives;

(b) to the Member State to which the sentenced person will be deported once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;

(c) to the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that issuing State.

3. In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him or her self of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, in particular with a view to Article 4 (4). If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State

4. The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.

[(1)] OJ L 191, 7.7.1998, p. 4.

5. Paragraph 2(a) shall not apply to Poland as an issuing State and as an executing State in cases where the judgement was issued before the lapse of five years from 5 December 2011. Poland may at any time notify the General Secretariat of the Council that it will no longer avail itself of this derogation.

Article 7

Double criminality

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the judgment and enforcement of the sentence imposed:

— participation in a criminal organisation,

— terrorism,

— trafficking in human beings,

— sexual exploitation of children and child pornography,

— illicit trafficking in narcotic drugs and psychotropic substances,

— illicit trafficking in weapons, munitions and explosives,

— corruption,

— fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests[(1)],

— laundering of the proceeds of crime,

— counterfeiting currency, including of the euro,

— computer-related crime,

— environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

— facilitation of unauthorised entry and residence,

— murder, grievous bodily injury,

— illicit trade in human organs and tissue,

— kidnapping, illegal restraint and hostage-taking,

— racism and xenophobia,

— organised or armed robbery,

— illicit trafficking in cultural goods, including antiques and works of art,

— swindling,

— racketeering and extortion,

— counterfeiting and piracy of products,

[(1)] OJ C 316, 27.11.1995, p. 49.

— forgery of administrative documents and trafficking therein,

— forgery of means of payment,

— illicit trafficking in hormonal substances and other growth promoters,

— illicit trafficking in nuclear or radioactive materials,

— trafficking in stolen vehicles,

— rape,

— arson,

— crimes within the jurisdiction of the International Criminal Court,

— unlawful seizure of aircraft/ships,

— sabotage

2. The Council may decide to add other categories of offences to the list provided for in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 29 (5) of this Framework Decision, whether the list should be extended or amended.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 8

Recognition of the judgment and enforcement of the sentence

1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non- enforcement provided for in Article 9.

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.

Article 9

Grounds for non-recognition and non-enforcement

1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

(a) the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;

(b) the criteria set forth in Article 4(1) are not met;

(c) enforcement of the sentence would be contrary to the principle of *ne bis in idem*;

(d) in a case referred to in Article 7(3) and, where the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;

(e) the enforcement of the sentence is statute-barred according to the law of the executing State;

(f) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;

(g) the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued;

(h) at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;

(i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

—either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

—was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend

him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

—expressly stated that he or she does not contest the decision,

or

—did not request a retrial or appeal within the applicable time frame;

(j) the executing State, before a decision is taken in accordance with Article 12(1), makes a request, in accordance with Article 18(3), and the issuing State does not consent, in accordance with Article 18(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;

(k) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding Article 8(3), cannot be executed by the executing State in accordance with its legal or health care system;

(l) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(l) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (i), (k) and (l), before deciding not to recognise the judgment and enforce the sentence, the competent authority of the executing State shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

Article 10

Partial recognition and enforcement

1. If the competent authority of the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement, as provided for in paragraph 2.

2. The competent authorities of the issuing and the executing States may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with the conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

Article 11

Postponement of recognition of the judgment

The recognition of the judgment may be postponed in the executing State where the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the executing State for the certificate to be completed or corrected.

Article 12

Decision on the enforcement of the sentence and time limits

1. The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8(2) and (3).

2. Unless a ground for postponement exists under Article 11 or Article 23(3), the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

3. When in exceptional cases it is not practicable for the competent authority of the executing State to comply with the period provided for in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

Article 13

Withdrawal of the certificate

As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

Article 14

Provisional arrest

Where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody by reason of this provision.

Article 15

>Transfer of sentenced persons

1. If the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.

2. If the transfer of the sentenced person within the period laid down in paragraph 1 is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and

agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed.

Article 16

Transit

1. Each Member State shall, in accordance with its law, permit the transit through its territory of a sentenced person who is being transferred to the executing State, provided that a copy of the certificate referred to in Article 4 has been forwarded to it by the issuing State together with the transit request. The transit request and the certificate may be transmitted by any means capable of producing a written record. Upon request of the Member State to permit transit, the issuing State shall provide a translation of the certificate into one of the languages, to be indicated in the request, which the Member State requested to permit transit accepts.

2. When receiving a request to permit transit, the Member State requested to permit transit shall inform the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, or, except as provided in paragraph 1, detained or otherwise subjected to any restriction of his or her liberty in its territory for any offence committed or sentence imposed before his or her departure from the territory of the issuing State. In such a case, the issuing State may withdraw its request.

3. The Member State requested to permit transit shall notify its decision, which shall be taken on a priority basis and not later than one week after having received the request, by the same procedure. Such a decision may be postponed until the translation has been transmitted to the Member State requested to permit transit, where such translation is required under paragraph 1.

4. The Member State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.

5. A transit request shall not be required in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the information provided for in paragraph 1 within 72 hours.

Article 17

Law governing enforcement

1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

2. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.

3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.

4. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

Article 18

Specialty

1. A person transferred to the executing State pursuant to this Framework Decision shall not, subject to paragraph 2, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.

2. Paragraph 1 shall not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) when the offence is not punishable by a custodial sentence or detention order;

(c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure *in lieu* thereof, even if the penalty or measure *in lieu* may give rise to a restriction of his or her personal liberty;

(e) when the sentenced person consented to the transfer;

(f) when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer. Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) for cases other than those mentioned under points (a) to (f), where the issuing State gives its consent in accordance with paragraph 3.

3. A request for consent shall be submitted to the competent authority of the issuing State, accompanied by the information mentioned in Article 8(1) of Framework Decision 2002/584/JHA and a translation as referred to in Article 8(2) thereof. Consent shall be given where there is an obligation to surrender the person under that Framework Decision. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 5 of that Framework Decision, the executing State shall give the guarantees provided for therein.

Article 19

Amnesty, pardon, review of judgment

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.

2. Only the issuing State may decide on applications for review of the judgment imposing the sentence to be enforced under this Framework Decision.

Article 20

Information from the issuing State

1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the sentence ceases to be enforceable immediately or within a certain period of time.

2. The competent authority of the executing State shall terminate enforcement of the sentence as soon as it is informed by the competent authority of the issuing State of the decision or measure referred to in paragraph 1.

Article 21

Information to be given by the executing State

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

(a) of the forwarding of the judgment and the certificate to the competent authority responsible for its execution in accordance with Article 5(5);

(b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;

(c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;

(d) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;

(e) of any decision to adapt the sentence in accordance with Article 8 (2) or (3), together with the reasons for the decision;

(f) of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision;

(g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;

(h) of the sentenced person's escape from custody;

(i) of the enforcement of the sentence as soon as it has been completed.

Article 22

Consequences of the transfer of the sentenced person

1. Subject to paragraph 2, the issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun.

2. The right to enforce the sentence shall revert to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence pursuant to Article 21(h).

Article 23

Languages

1. The certificate shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.

2. Subject to paragraph 3, no translation of the judgment shall be required.

3. Any Member State may, on adoption of this Framework Decision or later, in a declaration deposited with the General Secretariat of the Council state that it, as an

executing State, may without delay after receiving the judgment and the certificate, request, in cases where it finds the content of the certificate insufficient to decide on the enforcement of the sentence, that the judgment or essential parts of it be accompanied by a translation into the official language or one of the official languages of the executing State or into one or more other official languages of the Institutions of the European Union. Such a request shall be made, after consultation, where necessary, to indicate the essential parts of the judgments to be translated, between the competent authorities of the issuing and the executing States.

The decision on recognition of the judgment and enforcement of the sentence may be postponed until the translation has been transmitted by the issuing State to the executing State or, where the executing State decides to translate the judgment at its own expenses, until the translation has been obtained.

Article 24

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively in the sovereign territory of the issuing State.

Article 25

Enforcement of sentences following a European arrest warrant

Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.

CHAPTER III

FINAL PROVISIONS

Article 26

Relationship with other agreements and arrangements

1. Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

— The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997;

— The European Convention on the International Validity of Criminal Judgements of 28 May 1970;

— Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders;

— The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force after 27 November 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 5 December 2008 in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

4. Member States shall by 5 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

Article 27

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 28

Transitional provision

1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.

2. However, any Member State may, on the adoption of this Framework Decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011. The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.

Article 29

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 5 December 2011.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information by the Commission, the Council shall, no later than 5 December 2012, assess the extent to which Member States have complied with the provisions of this Framework Decision

3. The General Secretariat of the Council shall notify the Member States and the Commission of the notifications or declarations made pursuant to Article 4(7) and Article 23(1) or (3).

4. Without prejudice to Article 35(7) of the Treaty on European Union, a Member State which has experienced repeated difficulties in the application of Article 25 of this Framework Decision, which have not been solved through bilateral consultations,

shall inform the Council and the Commission of its difficulties. The Commission shall, on the basis of this information and any other information available to it, establish a report, accompanied by any initiatives it may deem appropriate, with a view to resolving these difficulties.

5. By 5 December 2013, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate. The Council shall on the basis of any report from the Commission and any initiative, review, in particular Article 25, with a view to considering whether it is to be replaced by more specific provisions.

Article 30

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

ANNEX I

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ([1])

[1] **This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State.**

(a) * Issuing State: ……

* Executing State: ……

(b) The court which delivered the judgment imposing the sentence that became final:

Official name: ……

The judgment was delivered on (give date: dd-mm-yyyy): ……

The judgment became final on (give date: dd-mm-yyyy): ……

Reference number of the judgment (if available): ……

(c) Information related to the authority that may be contacted for any question related to the certificate:

1. Type of authority: Please tick the relevant box:

☐ Central authority ……

☐ Court ……

☐ Other authority ……

2. Contact details of the authority indicated under point (c) 1:

Official name: ……

……

Address: ……

……

Tel.: (country code) (area/city code) ……

Fax: (country code) (area/city code) ……

E-mail address (if available): ……

3. Languages in which it is possible to communicate with the authority:

4. Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, telephone No, fax, e-mail address), if different from 2: ……

……

……

(d) Information regarding the person on whom the sentence has been imposed:

Name: ……

Forename(s): ……

Maiden name, where applicable: ……

Aliases, where applicable: ……

Sex: ……

Nationality:……

Identity number or social security number (if available): ……

Date of birth: ……

Place of birth: ……

Last known addresses/residences: ……

Language(s) which the person understands (if known): ……

……

The sentenced person is:

☐ in the issuing State and is to be transferred to the executing State.

☐ in the executing State and enforcement is to take place in that State.

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

   ……

2. Type and reference number of the sentenced person's identity card or passport:

   ……

3. Type and reference number of the sentenced person's residence permit:

   ……

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:

   ……

   ……

(e) Request for provisional arrest by the issuing State (where the sentenced person is in the executing State):

☐ The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (If applicable and available):

……

……

……

(f) Relation to any earlier European Arrest Warrant (EAW):

☐ An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

.....

Name of the authority that issued the EAW: ….....

Date of decision to undertake execution and, if available, reference number:

.....

Name of the authority that issued the decision to undertake execution of the sentence:

.....

☐ An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person: ….....

Name of the authority that issued the decision to surrender: ….....

Reference number of the decision, if available:.....

Date of the surrender of the person, if available: ….....

(g) Reasons for forwarding the judgment and the certificate (if you have filled in Box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

☐ (a) The executing State is the State of nationality of the sentenced person in which he or she lives.

☐ (b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issue, and, if available, the reference number:

☐ (c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.

☐(d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:

☐ it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or

☐ it is confirmed that the sentenced person is a national of the executing State.

(j) Information related to early or conditional release:

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:

☐ half the sentence

☐ two-thirds of the sentence

☐ another portion of the sentence (please indicate):

2. The competent authority of the issuing State requests to be informed of:

☐ The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;

☐ The beginning and the end of the period of early or conditional release.

(k) Opinion of the sentenced person:

1. ☐ The sentenced person could not be heard because he/she is already in the executing State.

2. ☐ The sentenced person is in the issuing State and:

a. ☐ has requested the forwarding of the judgment and the certificate

☐ consented to the forwarding of the judgment and the certificate

☐ did not consent to the forwarding of the judgment and the certificate (state reasons given by the sentenced person):

.....

.....

b. ☐ Opinion of the sentenced person is attached.

☐ Opinion of the sentenced person was forwarded to the executing State on (give date: dd-mm-yyyy):

.....

(l) Other circumstances relevant to the case (optional information):

.....

.....

(m) Final information:

The text of the judgment(s) is (are) attached to the certificate(1).

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate

.....

Name: .....

Post held (title/grade): .....

Date: .....

Official stamp (if available) .....

(1) The competent authority of the issuing State must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. Any available translation of the judgment(s) may also be attached.

ANNEX II

NOTIFICATION OF THE SENTENCED PERSON

You are hereby notified of the decision of ..... (competent authority of the issuing State) to forward the judgment of ..... (competent court of the issuing State) dated ..... (date of judgment) ..... (reference number; if available) to ..... (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of ..... (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of ..... (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of ..... (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in ..... (issuing State) by its nature or duration.

Number 3 *of* 2023

CRIMINAL JUSTICE (MUTUAL RECOGNITION OF CUSTODIAL SENTENCES) ACT 2023

REVISED

Updated to 23 July 2024

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

European Arrest Warrant Acts 2003 to 2024: this Act is one of a group of Acts included in this collective citation to be construed as one (*European Arrest Warrant (Amendment) Act 2024*, s. 32(2)). The Acts in the group are:

- *European Arrest Warrant Act 2003* (45/2003)
- *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012* (30/2012), Part 2 (s. 2)
- *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 75
- *European Arrest Warrant (Amendment) Act* (9/2024)

Transfer of Sentenced Persons Acts 1995 to 2023: this Act is one of a group of Acts included in this collective citation to be construed as one (*Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023*, s. 1(3)). The Acts in the group are:

- *Transfer of Sentenced Persons Act 1995* (16/1995)
- *Transfer of Sentenced Persons (Amendment) Act 1997* (41/1997)
- *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), Part 5 (ss. 57-63)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this

revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024* (30/2024)

All Acts up to and including *Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024* (30/2024), enacted 23 July 2024, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (Commencement) Order 2023* (S.I. No. 213 of 2023)

All statutory instruments up to and including *European Union (Hague Maintenance Convention) (Amendment) Regulations 2024* (S.I. No. 381 of 2024), made 23 July 2024, were considered in the preparation of this revision.