

Rehabilitation and mutual recognition – practice concerning EU law on transfer of persons sentenced or awaiting trial

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Section A: General information on existing situation: probation measures, alternative sanctions and supervision measures as an alternative to pre-trial detention

Please add the information required to answer the questions. Provide supporting or explanatory information – highlighting laws, policies and measures which justify the answer.

Q1. Please outline the specific probation measures or alternative sanctions that are available at the post-trial stage in the Member State on which you are reporting:

In Ireland it is possible to identify fourteen alternative sanctions available at post trial phase. These are set out below:

Dismissal or conditional discharge: Under the Probation of Offenders Act 1907¹ the court may order a dismissal or conditional discharge having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed.

- Fines: Often, offences will provide for a fine and/or another punishment (usually a prison sentence), while other offences attract only a fine. An example of the type of fines that may be imposed can be found at s.18 Road Traffic Act 2006². When a fine is imposed, the judges normally specifies a period of time within which the convicted person must pay the fine. If the fine is not paid within the time provided by the judge, convicted person can be sent to prison in default of the payment. Under the Fines (Payment and Recovery Act) 2014, the duration of a sentence for non-payment will be 5 days for less than €500, 10 days for amounts greater than €500 but less than €1,500, 20 days for amounts greater than €1,500 but less than €3,000 and 30 days for amounts greater than €3,000.³ The Fines (Payment and Recovery) Act 2014, provides that a Community Service Order (CSO) will be the Court's first recourse for failure to pay a fine, if it is not appropriate to make an attachment order⁴ and that prison will be a last resort, only in the event that a CSO cannot be made or it is not complied with. However the failure of the Courts Service to provide the necessary information technology to support this legislative provision⁵ renders it ineffective and in fact almost 9,000 people were imprisoned for failure to pay a court ordered fine in 2014⁶.

¹ Ireland, Probation of Offenders Act 1907 [21st August 1907], www.irishstatutebook.ie/1907/en/act/pub/0017/sec0001.html All hyperlinks were accessed on 5 June 2015.

² Ireland, s.18 Road Traffic Act 2006 [16th July, 2006], www.irishstatutebook.ie/2006/en/act/pub/0023/sec0018.html#sec18

³ Ireland, s. 20 the Fines (Payment and Recovery Act) 2014 [16th April, 2014], www.irishstatutebook.ie/pdf/2014/en.act.2014.0007.pdf

⁴ Ireland, s. 19 the Fines (Payment and Recovery Act) 2014 [16th April, 2014], www.irishstatutebook.ie/2014/en/act/pub/0007/

⁵ Irish Examiner (2015), '9,000 jailed for not paying a fine', 16th February 2015, www.iprt.ie/contents/2708

⁶ Irish Prison Service Annual Report (2014), www.irishprisons.ie/images/pdf/ar2014_english.pdf at page 28

- Community service orders: These are a direct alternative to prison and involve sentencing convicted offenders, who are over 16 years of age, to perform unpaid work for the community in lieu of a custodial sentence greater than twelve months and are provided for by the Community Service Act 1983⁷. The Criminal Justice (Community Service) (Amendment) Act 2011 permits judges to consider a community service order where the offence merits a custodial sentence of up to twelve months⁸.
- Probation Orders: The Probation of Offenders Act 1907⁹ enables a court to make a probation order discharging an offender subject to the observance of conditions, including supervision by a probation officer, over a specified period. In most instances the court will have requested a report from the Probation Service on the suitability of the offender for this approach. Additional conditions can be ordered by the court, such as participation in training, residence in a hostel or attendance at a treatment programme. The Probation Service works with the offender to identify the cause of the offending behaviour and seeks to avoid its recurrence.
- Curfews and exclusion orders: The court may make an order requiring the individual concerned to be at home at a particular address between certain hours of the day or night. Similarly, the judge might ban him/her from entering a certain street or premises, for example, a pub or licensed premises. These orders are often made as a condition of bail or suspended sentence.
- Restriction on movement orders: Under the Criminal Justice Act 2006¹⁰ the court can impose restriction on movement orders. This may be imposed if a person is convicted of certain offences (mainly public order and assault offences) and is sentenced to imprisonment of three months or more. The Act also provides that compliance with such orders may be electronically monitored. This has been implemented in only a minute number of cases¹¹.
- Forfeiture and Confiscation: Under s.10 of the Censorship of Publications Act 1929, judges have the power to order property, which is connected with the offence the sentenced person has been convicted of, to be forfeited or confiscated¹².
- Compensation of Victims: The Criminal Justice Act 1993¹³ established a system enabling the courts to make orders requiring offenders to pay compensation to identified victims.
- Binding over: The court may order that an offender enter into a bond to keep the peace and be of good behaviour. This involves undertaking to observe specified conditions for a period of time determined by the court.
- Court Poor Box: the judge may order the defendant to place a donation in the court poor box in lieu of conviction. In other words, instead of being convicted and facing imprisonment or a statutory fine, the judge can order that the defendant donate a sum to a charity nominated by the judge. This sum of money is then lodged by the defendant with the court and paid over by the Fines Office of the Court to the charity in question¹⁴. Proposals have been made to replace the Court Poor Box with a statutory reparation fund, under the Criminal Justice (Community Sanctions) Bill.¹⁵

⁷ Ireland, Community Service Act 1983 [13th July, 1983] www.irishstatutebook.ie/1983/en/act/pub/0023/index.html

⁸ Ireland, Criminal Justice (Community Service) (Amendment) Act 2011 [2nd August, 2011] www.irishstatutebook.ie/2011/en/act/pub/0024/

⁹ Ireland, Probation of Offenders Act 1907 [21st August 1907], www.irishstatutebook.ie/1907/en/act/pub/0017/sec0001.html

¹⁰ Ireland Criminal Justice Act 2006 [16th July, 2006] www.irishstatutebook.ie/2006/en/act/pub/0026/

¹¹ Citizens Information, www.citizensinformation.ie/en/justice/law_enforcement/restriction_on_movement_orders.html

¹² Ireland, s.10 Censorship of Publications Act 1929 [16th July, 1929] www.irishstatutebook.ie/1929/en/act/pub/0021/sec0010.html#zza21y1929s10

¹³ Ireland, Criminal Justice Act 1993 [3rd April, 1993] www.irishstatutebook.ie/1993/en/act/pub/0006/index.html

¹⁴ Citizens Information, www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/court_poor_box.html

¹⁵ Then Minister for Justice, Alan Shatter TD, ‘Minister Shatter publishes the General Scheme of Criminal Justice (Community Sanctions) Bill’ press release, 5 February

- **Suspended Sentences:** A further option available to the courts in sentencing is to suspend the sentence of imprisonment. This is a long-standing practice in Irish law which was placed on a statutory footing by section 99 of the Criminal Justice Act 2006¹⁶. Under this Act, suspended sentences operate as conditional sentences whereby offenders are not imprisoned on certain conditions imposed by a judge. The sentence is suspended for a specified period of time and a particular term of imprisonment is set. If an offender breaks the conditions imposed by the judge within the specified time period, the originally imposed term of imprisonment must be served.
- **Disqualifications:** The most common types of disqualifications are for convictions for driving offences under the Road Traffic Acts. However, under Part 7 of the Companies Act 1990¹⁷, a person convicted on indictment of a criminal offence related to a company, can be disqualified from holding certain positions related to running a company, such as a director.
- **Endorsements:** The Road Traffic Acts provide for a system of endorsements on a person's driving license relating to penalty points given for unsafe driving behaviors or where the person is disqualified from driving for a period¹⁸.
- **Community return:** The Community Return Programme is an incentivised scheme which provides for earned temporary release under which offenders, who are assessed by the Irish Prison Service, are offered early temporary release in return for supervised Community Service. Officers of the Probation Service assess offenders as to suitability and motivation to complete the community work. The scheme, which was introduced on a pilot basis in October 2011, is applicable to suitably assessed prisoners who are serving sentences of more than one and less than eight years. Those participating are granted renewable temporary release having served at, or after, the 50% stage of their sentence with a condition of their release to undertake Community Service supervised by the Probation Service¹⁹.

Q2. Please outline the specific supervision measures as alternatives to pre-trial detention that are available in the Member State:

The sole alternative to pre-trial detention in Ireland is bail, specifically conditional bail which can include supervision measures. Section 6 of the Bail Act 1997²⁰ provides that where an accused person is admitted to bail on his or her entering into a recognisance—

the recognisance shall, in addition to the condition requiring his or her appearance before the court at the end of the period of the remand of the accused person, be subject to the following conditions—

- (i) that the accused person shall not commit any offence, and
- (ii) that the accused person shall otherwise be of good behaviour,

2014, www.justice.ie/en/JELR/Pages/PR14000035

¹⁶ Ireland, s. 99 of the Criminal Justice Act 2006 [16th July, 2006] www.irishstatutebook.ie/2006/en/act/pub/0026/index.html

¹⁷ Ireland, Part 7 of the Companies Act 1990 [22nd December, 1990] www.irishstatutebook.ie/1990/en/act/pub/0033/index.html

¹⁸ Citizens Information, www.citizensinformation.ie/en/travel_and_recreation/motoring_1/driving_offences/penalty_points_for_driving_offences.html

¹⁹ Irish Prison Service (August 2012),

[www.probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Community+Return+Information+Brochure/\\$FILE/Community+Return+Information+Brochure.pdf](http://www.probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Community+Return+Information+Brochure/$FILE/Community+Return+Information+Brochure.pdf)

²⁰ Ireland, s. 6 the Bail Act 1997 [5th May, 1997] www.irishstatutebook.ie/1997/en/act/pub/0016/sec0006.html#sec6

The recognisance may be subject to such conditions as the court considers appropriate having regard to the circumstances of the case, including but, any one or more of the following conditions:

- (i) that the accused person resides or remains in a particular district or place in the State,
- (ii) that the accused person reports to a specified Garda Síochána Station at specified intervals,
- (iii) that the accused person surrenders any passport or travel document in his or her possession or, if he or she is not in possession of a passport or travel document, that he or she refrains from applying for a passport or travel document,
- (iv) that the accused person refrains from attending at such premises or other place as the court may specify,
- (v) that the accused person refrains from having any contact with such person or persons as the court may specify.

Regarding the possibility of developing other alternatives to pre-trial detention, in its response to the EU Commission's *Strengthening mutual trust in the European judicial area – A Green Paper on the application of the EU criminal justice legislation in the field of detention*, the Irish Department of Justice stated: “The Green Paper suggests the possibility of future EU initiatives in the area of bail law. Such initiatives could have significant implications for Irish law in this area, and Ireland would have to examine carefully the possible impact that such initiatives may have on the flexibility currently available to the Irish courts in dealing with the requirements of individual bail cases. Given that the relevant Framework Decision in this area has yet to be fully implemented by Member States, it would appear premature to examine the need for EU legislative proposals in the area at this stage, as the practical issues regarding the operation of the Framework Decision have yet to be seen.”²¹ “We do not see any merit in EU rules on maximum pre-trial periods.”²²

²¹ See *Department of Justice and Equality response 2011*, p. 1 available at ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/ie_department_of_justice_and_equality_response_en.pdf . The Department makes a similarly hostile statement to the potential development of EU wide alternatives to detention more generally at p.3.

²² See *Department of Justice and Equality response 2011*, p. 6, available at ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/ie_department_of_justice_and_equality_response_en.pdf

Q3. Are there any specific legislative or policy developments regarding alternatives to prison (at the pre- and post-trial stage) of particular suspects/sentenced persons (such as children, persons with disabilities, persons in need of special treatment or mothers with young children)?

Developments in alternatives to imprisonment for children

The Children Act 2001²³ as amended constituted a fundamental revision of legislation governing the treatment of accused, suspected and convicted children in conflict with the law and non-offending children in need of special care or protection. The considerations behind the Act were that:

- Prevention, through early intervention, is desirable and in the medium to long term likely to produce positive results;
- Where a child is apprehended for committing an offence, diversion should, where possible and where the interests of society would not be adversely affected, be the preferred option;
- Where it is necessary to bring a child before the courts on a criminal charge, a wide range of community sanctions should be available to the court;
- Detention should be a last resort, but where it is unavoidable it should be in institutions where the ethos is educational rather than penal.²⁴

Among other things, the Children Act 2001 provided the framework for the development of the juvenile justice system. It reflected the thinking that young offenders, by reason of their age and level of maturity, deserve to be dealt with differently than adult offenders. The philosophy underpinning the juvenile justice aspects of the Act is that there should be a suitable intervention for every child who commits an offence, no matter what the offence or the circumstances of the child who commits it. The central principle that governs the Children Act 2001 is that children should be brought up in their own communities and families. Where intervention occurs, it should aim to support and maintain children within these relationships and networks because it is clear that this is where children do best²⁵.

Diversion Programme

The Garda Diversion Programme²⁶ operates under Part 4 of the Children Act, 2001 and provides a package of measures for dealing with children aged 12-17 who commit an offence or multiple offences. This programme enables child offenders to be dealt with by way of caution rather than the formal court

²³ Ireland, The Children Act 2001 [8th July, 2001] www.irishstatutebook.ie/2001/en/act/pub/0024/print.html

²⁴ Brian Lenihan, Seanad Debate, 20 October 2004,

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2004102000014?opendocument>

²⁵ ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/ie_department_of_justice_and_equality_response_en.pdf

²⁶ Garda Diversion Programme, www.iyjs.ie/en/IYJS/Pages/WP08000061

system. These measures include an informal (unsupervised) caution and a formal (supervised caution). To be considered for admission to the Diversion Programme a child must accept responsibility for the offence(s) committed and consent to be cautioned and supervised. In addition to this, the Children Act 2001 has introduced the concept of 'restorative justice' to the juvenile justice system in the form of restorative cautions and restorative family conferences.

Garda Youth Diversion Projects (GYDP)

Garda Youth Diversion Projects²⁷ (GYDPs) work in tandem with, and act as a resource to, the Garda Diversion Programme. GYDPs are community-based, multi-agency crime prevention and crime reduction initiatives which, primarily, seek to divert young people, who have been involved in anti-social and/or criminal behaviour. The GYDPs challenge the offending behaviour by providing suitable activities to facilitate personal development, promote civic responsibility and improve long-term employability prospects. The projects work closely with An Garda Síochána (the Irish police), especially Juvenile Liaison Officers and Community Gardaí. The projects contribute to improving the quality of life within communities and to enhancing Garda/community relations. The projects may also work with young people who are significantly at risk of becoming involved in anti-social and /or criminal behaviour. There are 100 GYDPs nationwide. The majority of participants are identified by Gardaí and project workers work on building relationships with these targeted individuals to ensure better outcomes where a pattern of offending has been identified in a community.²⁸

Young Persons Probation (YPP) Projects

Young Persons Probation²⁹ (YPP) is a specialised division of the Probation Service with dedicated resources to work with young people aged 12 to 18 who are prosecuted before the courts. YPP officers may intervene at two levels. Judges may, at their discretion, use the option of YPP supervision of young offenders during deferment of penalty. This supervision can include structured activities, for example, education, training, mentoring etc. These activities may also include involvement with a YPP Community Project. Secondly, YPP officers are involved in supervised alternatives to custody which may be ordered by the courts including a probation order, community service order (for 16/17 year olds), mentoring order, training/activities orders, day centre orders, etc. These activities also might involve the young offender attending a YPP Community Projects which are funded by the Irish Youth Justice Service.

Anti Social Behaviour Measures

Part 13 of the Criminal Justice Act 2006 introduced new measures with effect from 1st March 2007 to tackle anti-social behaviour of children through a civil process. These measures provide that when a Garda becomes aware of anti-social behaviour, the Garda may issue a behaviour warning to the child. Failure to obey the warning may result in a good behaviour contract being made involving the child, their parent(s) or guardian and the Gardaí³⁰. If a

²⁷ Garda Diversion Programme, www.iyjs.ie/en/IYJS/Pages/WP08000062

²⁸ Progress Report on Garda Youth Diversion Project Development 2009-2011, www.iyjs.ie/en/IYJS/Progress%20Report%20Template%20FINAL%2014-1-13.pdf/Files/Progress%20Report%20Template%20FINAL%2014-1-13.pdf, at p 6

²⁹ Garda Diversion Programme, www.iyjs.ie/en/IYJS/Pages/WP08000101

³⁰ Garda Diversion Programme, www.iyjs.ie/en/IYJS/Pages/WP08000065

contract is broken or if it is not working, it can be renewed or, an application can be made to the Children Court for a Civil Behaviour Order. In addition to the Order, the court may also make a plan for the child to be supervised by their parents or guardian.

Community Sanctions

Part 9 (Sections 115 – 141) of the Children Act 2001 (as amended)) provides for community sanctions for young offenders under the age of 18 and introduced a new range of community sanctions available to the Courts. These sanctions are aimed at reducing the number of children sentenced to detention by the Courts and improving the outcomes for children in a range of areas, including such matters as the rate of reoffending, education attainment, family supports and substance abuse.”³¹

Restorative Justice Programmes

There are two restorative justice initiatives provided for in the Children Act 2001:

- A restorative conference or restorative caution included in the Garda Diversion Programme.
- A court-ordered restorative justice conference delivered through the Probation Service.

In a restorative justice conference, a victim can speak directly to a child about the hurt and harm that they have caused. In some cases, there is an agreement on a way that the child can compensate the victim or do something positive for the community such as an apology to the victim, financial or other reparations to the victim or an initiative with the child’s family and community that might help to prevent re-offending³².

Developments in alternatives to imprisonment for women

The Joint Probation Service - Irish Prison Service Strategy 2014-16 on effective responses to women who offend sets out a gender-informed approach³³. The Abigail Centre in Finglas, Dublin is run by Depaul Ireland and by Novas Ireland and operates as a half-way house for women referred by the Probation Service and the Irish Prison Service. Novas Ireland also runs an accommodation unit on the same sit for women referred by Dublin City Council. The Centre provides supported accommodation and a wide variety of inter-related services for vulnerable women. On-site supports include life skills, education, training for the workplace, family mediation, addiction services, physical and mental health services, budgeting and housing.³⁴

³¹ See *Department of Justice and Equality response 2011*, pp. 6-8, available at ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/ie_department_of_justice_and_equality_response_en.pdf

³² Garda Diversion Programme, www.iyjs.ie/en/IYJS/Pages/WP08000064

³³ Irish Prison Service, www.irishprisons.ie/images/pdf/women_strat_2014.pdf

³⁴ Minister for Justice and Equality, Frances Fitzgerald TD, Written Answers, Dáil Eireann, [18th February 2015](http://www.dail.ie/18th_February_2015)

Developments in alternatives to imprisonment in relation to a specific regional prison at Cork

In conjunction with the Probation Service, the Irish Prison Service hosted a multi-agency meeting in Cork on 27 January, 2012 with a view to exploring potential solutions to the provision of effective community based programmes which could act as alternatives to custody for suitably risk assessed prisoners serving short term sentences in Cork prison. The meeting was attended by over 100 people drawn from statutory and non-statutory community-based services, including An Garda Síochána. The result was the policy document *Unlocking Community Alternatives: A Cork Approach*³⁵.

Developments in alternatives to imprisonment for people with disabilities

Alternatives to imprisonment for people with mental health problems exist under the Mental Health Act 2001³⁶ and the Criminal Law (Insanity) Act 2006³⁷.

The Mental Health Act 2001 provides for the involvement and intervention of An Garda Síochána for the purposes of diversion from the Criminal Justice system in specific circumstances. These relate to a member of An Garda Síochána being an applicant for a person to be involuntarily admitted (Section 9), taking a person into custody when there is a serious likelihood of the person causing immediate and serious harm to himself or others (Section 12), assisting in the removal of a patient to an approved centre (Section 13) and returning an involuntary patient to an approved centre (Section 27). An Garda Síochána have developed a joint protocol with the Health Service Executive in relation to these provisions of the Act.³⁸ This serves as a direct alternative to detention and trial.

While there is no specific legislation to divert at the court stage, it can happen under the current legislative framework. A judge can order the transfer of defendants found to have a mental disorder and to be unfit to be tried to a "designated centre" under section 4 of the Criminal Law (Insanity) Act 2006. Under the Community Sanctions Bill³⁹, it will be open to the court to make binding orders to direct people to undertake psychiatric treatment if necessary. This envisages a direct alternative to custody.

³⁵ Irish Prison Service, www.irishprisons.ie/images/pdf/finalcorkplan.pdf

³⁶ Ireland, Mental Health Act 2001 [8th July, 2001] www.irishstatutebook.ie/pdf/2001/en.act.2001.0025.pdf

³⁷ Ireland, Criminal Law (Insanity) Act 2006 [12th April, 2006] www.irishstatutebook.ie/pdf/2006/en.act.2006.0011.pdf

³⁸ An Garda Síochána, Press Release, 15 September 2010

³⁹ Ireland, Criminal Justice (Community Sanctions) Bill 2014, www.justice.ie/en/JELR/General%20Scheme%20-%20Criminal%20Justice%20%28Community%20Sanctions%29%20Bill.pdf/Files/General%20Scheme%20-%20Criminal%20Justice%20%28Community%20Sanctions%29%20Bill.pdf

Section B: Transfer of suspects/sentenced persons

Explanatory note on the transposition of the Framework Decisions in Ireland:

As the current position is that Ireland has not yet transposed any of the three framework decisions, it is not possible to provide responses to all the questions set out in the matrix. There are, however, a number of Bills proposed for legislation in the near future to transpose the FDs⁴⁰. While these Bills are on the legislative programme, it is unclear when they will be published, drafted or enacted and drafts are currently unavailable⁴¹. As such, what is outlined in the matrix below describes the current scheme which applies in practice but does not describe the transposition of the Framework Decisions as this simply has not yet taken place. As the proposed content of these Bills has not been finalised, it has not been attempted to hypothesize what the procedures under these Bills will be once finally published and/or passed.

Framework Decision 2008/909

The operation of the law in this area is based on the Council of Europe Convention on the Transfer of Sentenced Persons 1983⁴². The domestic legislation giving effect to this Convention is the Transfer of Sentenced Persons Act 1995 and the Transfer of Sentenced Persons (Amendment) Act 1997. The Transfer of Execution of Sentences Act 2005 gives effect to Article 2 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons 1983⁴³. The Transfer of Sentenced Persons and Transfer of Execution of Sentences Bill will repeal and replace the 1995, 1997 and 2005 Acts and give effect to Council Decision 2008/909/JHA. In responding to a relatively recent Parliamentary Question on the issue, the then Minister for Justice responded as follows:

“Legislation will be required to give effect to the provisions of EU Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. It is expected that Government approval for the required legislation will be sought later this year [that was 2013]. It is envisaged that a Bill will be published in 2014. Under an existing 1983 Council of Europe Convention, to which Ireland is party, individuals convicted of an offence in another Convention state, and for which he or she has received a custodial sentence, may be transferred to their home state to serve that sentence. The Framework Decision seeks to extend the circumstances in which a person may serve a custodial sentence, imposed in another EU state, in their home state. Whereas the 1983 Convention provides for the physical transfer of the person from the sentencing state to their home state, the Framework Decision, inter alia, permits the transfer of the sentence where the person subject to that sentence is in either

⁴⁰ Information from a representative of the Department of Justice

⁴¹ See further Bracken, The Transfer of Sentenced Persons Convention: Lost in Translation, Cork Online Law Review corkonlinelawreview.com/index.php/2014/10/06/the-transfer-of-sentenced-persons-convention-lost-in-translation/

⁴² Council of Europe, Convention on the transfer of sentenced persons, CETS No. 112, 1983.

⁴³ Council of Europe, Additional Protocol to the Convention on the Transfer of Sentenced Persons, CETS No. 167, 1997. Available at: conventions.coe.int/Treaty/en/Treaties/Html/167.htm

the issuing state or the state being asked to execute the sentence. Moreover, the consent of the sentenced person will not be required where the request for execution of the sentence is sent to that person's state of nationality. However, there is a restriction on the application of the Framework Decision insofar as it applies to Ireland. Under article 28.2 of the instrument, a member state may make a declaration that existing arrangements will continue to apply in relation to judgements delivered prior to 5 December 2011. Ireland has made such a declaration.”

The recent case of *Sweeney v. Governor of Loughan House Open Centre* [2014] IESC 42⁴⁴ states the current situation in Irish law: “*Council Framework Decision 2008/909/JHA (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) (“the Framework Decision”), while drafted to re-place the Convention, has not been given effect in Irish Law to date*”⁴⁵.

Framework Decision 2008/947

There is currently no domestic formal legal framework governing the operation of transfer of noncustodial sentences and probation orders.

The Criminal Law Probation Supervision Mutual Recognition (Mutual Recognition of Probation Judgments and Decisions) Bill will give effect to FD 2008/947 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. It has been noted in the course of this research that although this is an informal arrangement, it enjoys success because of good interpersonal relationships and cooperation between agencies in different jurisdictions.⁴⁶ In responding to a recent Parliamentary Question on the issue, the Minister for Justice responded as follows:

The fact that a person who has committed an offence in Ireland is from another jurisdiction will not prevent a court, when sentencing the person, from imposing the sanction it considers appropriate in all the circumstances of the case, subject to the maximum penalty provided in law for the offence concerned. An offender who is subject to a community service order will be required to reside in the State while performing the unpaid work required by the order. This is provided for by section 6 of the Criminal Justice (Community Service) Act 1983, as substituted by section 5 of the Criminal Justice (Community Service) (Amendment) Act 2011, which requires a community service order to specify the district of residence, where made by the District Court, or the circuit of residence, where made by the Circuit Court, in which the offender resides or will reside while performing work under the order. The Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Bill, which is currently being drafted, will facilitate the enforcement in other EU Member States of community sanctions imposed by the Irish courts on persons who are ordinarily resident in other Member States. The Bill will give effect to EU Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to

⁴⁴ www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IESC/2014/S42.html&query=Sweeney+and+v.+and+Governor+and+of+and+Loughan+and+House+and+Open+and+Centre&method=boolean

⁴⁵ In para 2.5 of the judgement

⁴⁶ Information from a representative of the Irish Probation Service

judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. The Framework Decision is based on the principle of mutual recognition by EU Member States of judicial decisions in criminal matters. It provides for cross-border supervision of probation measures and alternative sanctions, such as probation, community service, suspended sentences and temporary release. The Framework Decision is intended to make it easier to impose and enforce such measures and sanctions on non-residents by providing legislative arrangements for Member States to recognise and supervise probation measures and alternative sanctions imposed in another Member State. I hope to publish the Bill early next year with a view to its enactment during the first half of the year⁴⁷.

Framework Decision 2009/829

The Criminal Law (Mutual Recognition of Decisions on Supervision Measures) Bill will give effect to FD 2009/829 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. While these Bills are on the legislative programme, it is unclear when they will be drafted, published or enacted. As a result, it was not possible to answer questions relating to the operation of this Framework Decision.

⁴⁷ Kildarestreet.com (4 November 2014), <https://www.kildare.com/wrans/?id=2014-11-04a.1120&s=mual+recognition#g1122.r>

Research methodology:

Because Ireland has yet to transpose the Framework Decisions, as explained above, there are few official sources of information regarding their implementation or the existing regime for the transfer of sentenced persons. The Irish Penal Reform trust conducted desk-based research to review current practices and procedures and particularly the legislative framework governing this area, in the absence of the transposition of the above-mentioned Framework Decisions. The desk-based stage involved an examination of legislative instruments, as well as accessing reports on the operation of such instruments by the Department of Justice.

Subsequent to this desk-based research, it was necessary to conduct interviews with those involved in this area, to ascertain what practices and procedures are currently operating under the existing regimes in Ireland. Interviews with representatives from: the Irish Prison Service, the Irish Council for Prisoners Overseas (ICPO) and the the Irish Probation Service revealed much information that was not available from other sources. The Irish Council for Prisoners Overseas is a charitable organisation which provides information and support for prisoners in foreign countries and their loved-ones. They also have an arrangement with the Department of Justice whereby they can, on request, monitor the status of applications for individual prisoners.

Furthermore, as there is no legislative framework in Ireland governing the transfer of probation orders, these transfers depend on entirely informal arrangements and agreements between the probation services of different jurisdictions. As a result, the representative of the Irish Probation Service was the sole source of information on the practices in this area.

Please give a response for each of the boxes. If the information is the same in two boxes, duplicate the text. If the question is not applicable, specify why.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q1. AVAILABILITY OF INFORMATION			
Q1.1. Is information publicly available in ‘issuing states’ concerning the following? If yes, please specify.			
<ul style="list-style-type: none"> • What information is provided (e.g. conditions for early release for FD 909 or the need for a suspect/sentenced person’s consent to a measure for FD 947 and 829)? 	<p>In terms of the <u>broad data</u>, the Annual Report on the Transfer of Sentenced Persons Acts is released yearly and contains information on the number of transfers, and the countries to and from which prisoners are transferred as well as a description of the current procedure.⁴⁸</p> <p>In terms of data available to an <u>individual prisoner</u>, application forms for transfers from Irish prisons are made available by the Higher Executive Officer of the Irish Prison Service (IPS) to the governors of individual prisons. It is for governors to distribute these within the prisons. We have requested a copy of these from the IPS on the 5th June 2015 but to</p>	<p>General information on transfer is available, ie. that it may be an option but that it is not guaranteed. There is information available about the cooperation of the Irish Probation Service with similar services in other jurisdictions.⁵⁴</p>	

⁴⁸ Annual Report on the Transfer of Prisoners Acts 1995 and 1997 by the Department of Justice and Equality 2014

www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf

⁵⁴ Probation Service, www.pprobation.ie/pws/websitepublishingdec09.nsf/Content/Work+in+other+Jurisdictions+and+International+Bodies

	<p>date this has not been made available to us. The forms do not appear to be available on the IPS website although there is reference to transfer on the page of the Irish Prison Service Operations Directorate⁴⁹.</p> <p>The Irish Council for Prisoners Overseas provides general information on its website for prisoners wishing to transfer to an Irish prison⁵⁰ as well as providing relevant information directly to prisoners and their families on prison transfers⁵¹. The Irish Department of Foreign Affairs also providing information abroad about the ICPO service⁵². ICPO notes that outside of this, for these prisoners, information is most likely available in the prison handbook, but that this may not be useful for prisoners with literacy difficulties.⁵³</p>		
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⁴⁹ Irish Prison Services, www.irishprisons.ie/index.php/operations-directorate

⁵⁰ Irish Council for Prisoners Overseas, www.icpo.ie/support-for-prisoners/

⁵¹ Gavin, “Out of Sight, Out of Mind: Irish Prisoners in England and Wales”, Irish Probation Journal Volume 11, October 2014, page 40

⁵² Joint Committee on Justice, Defence and Equality Debate, ‘Repatriation of Irish Prisoners in the United Kingdom: Irish Council for Prisoners Overseas’ (11 March 2014), oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JUJ2014031100003?opendocument#C00200 at page 5

⁵³ Information from a representative of the Irish Council for Prisoners Overseas

<ul style="list-style-type: none"> • How is the information made publically available (tools, or networks used)? 	<p>See above. Application forms are made available within prisons and prisoners notified of the option to transfer at the outset, although they are notified that there is no guarantee of a transfer.⁵⁵</p>	<p>The information is available on the Probation Service website, in the section on their work with other jurisdictions.⁵⁶</p>	
<ul style="list-style-type: none"> • In which languages is the information provided? 	<p>The application form is provided to prison governors by the Operations Directorate of the Irish Prison Service in English and it was stated by the IPS that these can be translated into other languages on request.⁵⁷</p>	<p>The information is in English.</p>	
<p>Q1.2. Apart from the competent authorities required by the FDs, is there any other national office or point of contact responsible for leading initial discussions about potential transfers (as issuing and executing state)? If yes, please provide brief details.</p>	<p>The competent authority under the Transfer of Sentenced Persons Acts is the Operations Directorate. The initial point of contact for prisoners in Ireland as an issuing state is the prison governors, who have the responsibility of distributing application forms in the prisons.⁵⁸</p>	<p>The Irish Probation Service has an international desk to deal with transfers of sentenced persons subject to probation orders. If someone wishes to be transferred to another country from Ireland, they will raise the matter with the probation officer themselves, or the probation officer will suggest it to them. The Probation Service will contact the international desk to make transfer arrangements.⁵⁹</p>	

⁵⁵ Information from a representative of the Irish Prison Service

⁵⁶ Probation Service website www.pprobation.ie/pws/websitepublishingdec09.nsf/Content/Work+in+other+Jurisdictions+and+International+Bodies accessed on 8th June 2015

⁵⁷ Information from a representative of the Irish Prison Service

⁵⁸ Information from a representative of the Irish Prison Service

⁵⁹ Information from a representative of the Irish Probation Service

<p>Q1.3. Do the competent authorities collate information about their experience of transfers (such as personal data of the suspect/sentenced person, states involved, issues raised during the transfer process)? If yes, specify the information gathered.</p>	<p>The Operations Directorate of IPS collates general data regarding the use of the Transfer of Sentenced Persons Acts. This includes the number of transfers and the countries to and from which people have been transferred. Although data on the number of transfers and the countries to/from which prisoners are transferred is collated and published in the Annual Reports⁶⁰ there is no information available about specific issues arising in each individual transfer. According to the Annual Report on the Transfer of Sentenced Persons Acts, from 1995 to 2014, 166 prisoners have transferred out of Ireland and 149 have transferred in.⁶¹ The Operations Directorate of the Irish Prison Service collects data on each individual case including proof of identity, behaviour reports, information on family ties in the proposed geographical area for transfer, names and addresses</p>	<p>The international desk has access to a European database established by the ISTEP project⁶³ which is used to provide information on and compare sanctions – see www.cep-probation.org http://www.probation-transfers.eu/ There is not currently any formal or standard operating procedures or documentation publicly available but the probation service is currently considering development of specific and standard information sources for professionals and potential participants. A project to provide information on the transfer of prisoners to legal personnel is in the pipeline⁶⁴.</p>	
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⁶⁰ The Minister for Justice and Equality Frances Fitzgerald T.D. to the Houses of the Oireachtas, Annual Report 2014 www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf

⁶¹ The Minister for Justice and Equality Frances Fitzgerald T.D. to the Houses of the Oireachtas, Annual Report 2014 www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf

⁶³ The ISTEP (Implementation Support for Transferring of European Probation Sentences) project, supported by the European Commission Directorate General Justice under the criminal justice funding programme, supports the implementation of EU Council [Framework Decision 2008/947/JHA](#).

⁶⁴ Information from a representative of the Irish Probation Service

	<p>of people to support during the period of detention and release, police reports of any outstanding offences in either jurisdiction. This information is sent to the receiving State who then accept or refuse the application.⁶²</p>		
Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON			
<p>Q2.1. Is there a procedure in the issuing state (e.g. some form of mechanism that ensures it is done in all relevant cases) in place to inform the suspect/sentenced person of the option to transfer the judgment or decision to another Member State? If yes, please briefly provide information (e.g. is it an oral or written procedure) and specify who provides this information.</p>	<p>It was not clear from the interviews conducted that there was a standard operating procedure in operation to inform <i>every</i> prisoner who might be eligible of their option to apply for a transfer. However it was reported that prisoners are notified orally of the option to transfer by the Irish Prison Service at the outset of their sentence. Prison governors have the responsibility to disseminate information and application forms as provided by the Operations Directorate.⁶⁵</p>	<p>It was not clear from the interviews conducted that there was a standard operating procedure in operation to inform <i>every</i> prisoner who might be eligible of their option to apply for a transfer. From the interviews conducted, it appears that the procedure is informal and it is the probation officer who would inform the person of this option.⁶⁶</p>	

⁶² Information from a representative of the Irish Prison Service

⁶⁵ Information from a representative of the Irish Prison Service

⁶⁶ Information from a representative of the Irish Probation Service

<p>Q2.2. Is there a procedure in place in the issuing state to obtain the informed consent of the suspect/sentenced person before forwarding the judgment or decision to the executing state? (e.g. a pre-prepared written explanation of the process available in a number of languages). If yes, please briefly specify what information the suspect/sentenced person receives (e.g. information on appeal and release possibilities).</p>	<p>If a prisoner is applying to transfer out of the country, they will be required to complete a consent form and agree that they have full understanding of the contents of the form. The Higher Executive Officer advises prison governors to secure the services of an interpreter and/or translator for the purpose of ensuring that the prisoner is in a position to give consent and understands the process. The provision of prisoner consent to that transfer must be witnessed by a prison governor.⁶⁷ The Annual Report states that the long information gathering process process is necessary <i>“to ensure that all parties are fully aware of the legal consequences of a transfer and that an informed decision can be made by all concerned”</i>⁶⁸</p>	<p>Generally, most transfers are initiated by people subject to probation orders. The process is informal but where the order will be adapted, the sentenced person will give their consent before any transfer is made. All appeals must be exhausted before an application to transfer will be made.⁶⁹</p>	
<p>Q2.3. Does the suspect/sentenced person have the right to revoke his/her</p>	<p>Yes, up to the moment of transfer.⁷⁰ While this is not</p>	<p>Consent can be revoked at any point in the process.⁷² As this is an</p>	

⁶⁷ Information from a representative of the Irish Prison Service

⁶⁸ Annual Report on the Transfer of Prisoners Acts 1995 and 1997 by the Department of Justice and Equality 2014

www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf at page 3-4

⁶⁹ Information from a representative of the Irish Probation Service

⁷⁰ Information from a representative of the Irish Prison Service

⁷² Information from a representative of the Irish Probation Service

<p>consent to the transfer in the issuing state? If yes, please briefly specify until which stage of the procedure this right exists.</p>	<p>explicitly stated in the Transfer of Sentenced Persons Acts, there is a presumption against effecting any transfer if the transferee does not consent.⁷¹</p>	<p>informal process, there is no legislative basis for this.</p>	
<p>Q2.4. Is there any procedure in place in the issuing state to obtain the opinion of the sentenced person concerning the following?: If yes, please briefly specify e.g. is it an oral or a written procedure, are there any checks on actual understanding of the option).</p>			
<ul style="list-style-type: none"> • When consent is not required)? 	<p>At present the system is based on tripartite consent so the question is not applicable to the current situation in Ireland. If a prisoner is applying to transfer out of the country, they will be required to complete a consent form and agree that they have full understanding of the contents of the form. The Higher Executive Officer advises prison governors to secure the services of an interpreter and/or translator for the purpose of ensuring that the prisoner is in a position to give consent and understands the process. The provision of prisoner consent to that transfer must be witnessed by a prison governor.⁷³A key recommendation</p>		

⁷¹ Information from a representative of the Irish Prison Service

⁷³ Information from a representative of the Irish Prison Service

	<p>by Former Minister of State, Chris Flood is that the Irish government should not engage in any transfers that do not have the express consent of the potential transferee.⁷⁴ When a person is unable, because of age or physical or mental condition, to make an application in writing for transfer, a legal representative, or any other person considered appropriate by the Minister for Justice, can make an application on the person's behalf.⁷⁵ The Council of Europe has noted that the Irish Courts have taken a very strict and precise interpretation of the provisions which allow a transfer of sentence where a person has "fled to" this</p> <p>country from another state. The</p> <p>prosecution must be able to show that the person was either imprisoned or otherwise legally restricted from leaving the other state, and either escaped from imprisonment or breached conditions restricting the persons movements. In cases where the person simply left the other state to avoid imprisonment, but was</p>		
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⁷⁴ *Report on Irish Prisoners Abroad*, Chris Flood for the Department of Foreign Affairs, May 2007
<https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/report-on-irish-prisoners-abroad.pdf> accessed June 9th 2015

⁷⁵ Ireland, s. 4(2) Transfer of Sentenced Persons Act 1995 [17th July, 1995], www.irishstatutebook.ie/1995/en/act/pub/0016/print.html

	<p>legally free to leave the other state,</p> <p>the Irish Courts do not interpret this as coming within the meaning of the term "fleeing to".⁷⁶ Ireland does not operate Additional Protocol 3 to the Convention, and does not effect compulsory transfers under this protocol.⁷⁷</p>		
<ul style="list-style-type: none"> • When consent is required, Article 6 (3) of FD 2008/909/JHA). 	<p>At present, tripartite consent is required in all circumstances, between the sentenced person, the issuing state and the executing state.⁷⁸ Applications for transfer are only initiated by the potential transferee, by writing to the Minister⁷⁹ or approaching the prison governor.⁸⁰</p>		
<p>Q2.5. Does the suspect/sentenced person have the right to change his/her opinion on the transfer? If yes, please briefly specify until which stage of the procedure this right exists and how this is implemented in practice.</p>	<p>Prisoners may withdraw consent at any stage in the process. However if they subsequently change their mind they must start the process again from scratch i.e.</p>		

⁷⁶ Council of Europe, *Ireland – national procedures for transfer of sentenced persons*, www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/Ireland%20National%20Procedures%20for%20transfer.pdf

⁷⁷ *Report on Irish Prisoners Abroad*, Chris Flood for the Department of Foreign Affairs, May 2007

<https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/report-on-irish-prisoners-abroad.pdf>

⁷⁸ Ireland, s. 4(3) Transfer of Sentenced Persons Act 1995 [17th July, 1995] www.irishstatutebook.ie/1995/en/act/pub/0016/print.html

⁷⁹ Ireland, s. 4(1) Transfer of Sentenced Persons Act 1995 [17th July, 1995] www.irishstatutebook.ie/1995/en/act/pub/0016/print.html

⁸⁰ Information from a representative of the Irish Prison Service

	they cannot pick up an old application. ⁸¹		
Q2.6. Is the suspect/sentenced person assisted by a legal counsel in the issuing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone)	Generally, the prisoner makes the request to transfer directly through the prison governor and there is no standard provision of legal advice. It was observed that while solicitors may be involved there was no requirement for legal representation and the lack of legal representation was no bar to accessing the application process. ⁸²	The use of legal counsel depends on the case and there is no standard rule in this respect. ⁸³	
Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced person's language in the issuing state? If yes, please specify.	It was reported that interpreters or translators are provided if necessary, however there does not appear to be any formal procedure. ⁸⁴	Interpreters or translators are provided if necessary. There is no formal procedure. ⁸⁵	
Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?	It does not appear that there is a right to legal aid to assist with a transfer application under the general criminal legal aid scheme ⁸⁶	It does not appear that there is a right to legal aid to assist with a transfer application under the general criminal legal aid scheme. ⁸⁷	

⁸¹ Information from a representative of the Irish Prison Service

⁸² Information from a representative of the Irish Prison Service

⁸³ Information from a representative of the Irish Probation Service

⁸⁴ Information from a representative of the Irish Prison Service

⁸⁵ Information from a representative of the Irish Probation Service

⁸⁶ Information from a representative of the Prison Policy Unit, Department of Justice and Equality

⁸⁷ Information from a representative of the Prison Policy Unit, Department of Justice and Equality

Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:			
<ul style="list-style-type: none"> • While consenting to the transfer? 	Yes, IPS provides if necessary ⁸⁸	Translators or interpreters are provided by the courts if necessary for the preparation of pre-sentence reports. ⁸⁹	
<ul style="list-style-type: none"> • While requesting the transfer? 	Yes, IPS provides if necessary ⁹⁰	No info available	
Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	Yes, IPS provides if necessary ⁹¹	Translators or interpreters are provided by the courts if necessary for the preparation of pre-sentence reports. ⁹²	
Q2.11. Is the suspect/sentenced person's full understanding of the transfer checked on a case by case basis in the issuing state? Please provide brief information.	It is not possible to answer the question as to whether this happens in every case. What can be said is that following the agreement to the transfer, the prisoner will receive a letter from IPS detailing what sentence they	It is not possible to answer the question as to whether this happens in every case. As this is an informal practice, there is no procedure in place. Probation Officers would be the main point of contact for transferees and	

⁸⁸ Information from a representative of the Irish Prison Service

⁸⁹ Information from a representative of the Irish Probation Service

⁹⁰ Information from a representative of the Irish Prison Service

⁹¹ Information from a representative of the Irish Prison Service

⁹² Information from a representative of the Irish Probation Service

	<p>can expect to serve in the state to which they are being transferred. This follows from the report by the Chief State Solicitor’s Office into the equivalency and duration of the offence and sentence.⁹³</p>	<p>transfers are only effected at the request of the transferee.⁹⁴</p>	
<p>Q2.12. If the executing state adapts, before the transfer, the sentence or measure imposed by the issuing state (as authorised by Article 8.3 of FD 909, Article 9 of FD 947 and Article 13 of FD 829), does the suspect/sentenced person receive any updated information?</p>	<p>While s.7(4) of the Transfer Of Sentenced Persons Act 1995 allows for the sentence to be adapted, the relevant sections do not contain any provision as to the suspect/sentenced person receiving updated information. No established practice or procedure for this was identified by any interviewees, although Irish Council for Prisoners Overseas do keep transferees up to date on the status of their transfer.⁹⁵ Prison transfers happen most often between the UK and Ireland. The historical existence of sentences of “indeterminate imprisonment for public protection” in the UK with no equivalent Irish sentence has caused particular difficulties⁹⁶ – see further the Sweeney case cited</p>	<p>The process is informal but where the order will be adapted, the sentenced person will give their consent before any transfer is made. The sentenced person will be updated about what the order will entail in the executing state.⁹⁸</p>	

⁹³ Information from a representative of the Irish Council for Prisoners

⁹⁴ Information from a representative of the Irish Probation Service

⁹⁵ Information from a representative of the Irish Council for Prisoners Overseas

⁹⁶ Joint Committee on Justice, Defence and Equality Debate, ‘Repatriation of Irish Prisoners in the United Kingdom: Irish Council for Prisoners Overseas’ (11 March 2014), oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JUJ2014031100003?opendocument#C00200

⁹⁸ Information from a representative of the Irish Probation Service

	above (and Farrell v Governor of Portlaoise Prison ⁹⁷)		
Q2.13. Is there a right to appeal the forwarding of the judgment/decision in the issuing state? If yes, please briefly provide information (e.g. how the suspect is made aware of his/her right to appeal and what support is made available to him/her)	As the transfer only happens by tripartite consent, there is no requirement for an appeals mechanism. Consent can be revoked at any point. ⁹⁹	As the transfer only happens by request, there is no requirement for an appeals mechanism. Consent can be revoked at any point. ¹⁰⁰	
Q2.14. Does the suspect/sentenced person have a right to a regular review of the decision on the transfer in the issuing state? If yes, please briefly provide information (e.g. how often he/she can exercise this right)	As the transfer only happens by tripartite consent, there is no requirement for a review mechanism. Consent can be revoked at any point. ¹⁰¹ Queries regarding the status of an application can be directed to the Prisons Policy Section of the Department of Justice. ¹⁰² The Irish Council for Prisoners Overseas can also monitor the status of an application, on request, with the Department of Justice. ¹⁰³	As the transfer only happens by request, there is no requirement for a review mechanism. Consent can be revoked at any point. ¹⁰⁴	

⁹⁷ [2014] IEHC 420

⁹⁹ Information from a representative of the Irish Council for Prisoners Overseas

¹⁰⁰ Information from a representative of the Irish Probation Service

¹⁰¹ Information from a representative of the Irish Prison Service

¹⁰² *Report on Irish Prisoners Abroad*, para 7.4, Chris Flood for the Department of Foreign Affairs, May 2007

<https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/report-on-irish-prisoners-abroad.pdf>

¹⁰³ Information from a representative of the Irish Council for Prisoners Overseas

¹⁰⁴ Information from a representative of the Irish Prison Service

<p>Q2.15. Is the suspect/sentenced person assisted by legal counsel in the executing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone?)</p>	<p>It is not possible to answer this question as that would depend on the particular case. It can be said that there does not seem to be a standard operating procedure in this respect. Information is provided by Irish Council for Prisoners Overseas in executing States¹⁰⁵ It was observed that while solicitors may be involved there was no requirement for legal representation and the lack of legal representation was no bar to accessing the process.¹⁰⁶</p>	<p>The use of legal counsel depends on the case and there is no standard rule in this respect.¹⁰⁷</p>	
<p>Q2.16. Have there been instances where the Member State has refused a transfer based on a pre-determined ground of refusal, as permitted to a varying extent under each FD? If so, please briefly provide details.</p>	<p>In respect of prisoners requesting to transfer out, it was noted in the Annual Report 2014 that “application are principally refused owing to substantial reductions in sentence, due to divergent rates of remission, which the applicants would have attracted in the event of a transfer or if there is good reason to believe that the applicant would not ordinarily be resident in the</p>	<p>Generally, the basis for refusing supervision of a probation order in the State will be if there is not sufficient family ties. Generally, if there are sufficient family ties, the transfer will go ahead. It will sometimes be the case that there is not a direct equivalent alternative to detention available in Ireland, for example Ireland does not commonly impose electronic monitoring, something which is common in England and Wales. However a pragmatic and constructive approach is taken in</p>	

¹⁰⁵ Information from a representative of the Irish Council for Prisoners Overseas

¹⁰⁶ Information from a representative of the Irish Prison Service

¹⁰⁷ Information from a representative of the Irish Probation Service

	<p>jurisdiction he or she is applying to¹⁰⁸”.</p> <p>In respect of prisoners requesting to transfer into Ireland, grounds for refusal of a transfer in most commonly fall under one of three categories. First, the transfer may be refused on the basis that there are not sufficient family ties in Ireland to merit the transfer of a person back to the country.¹⁰⁹ Second, the lack of a similar sentence in Ireland may result in the application being refused.¹¹⁰ For example, IPP prisoners in the UK may not be transferred back to Ireland because there is no equivalent sentence, although they are not prohibited from applying¹¹¹. A third issue in the context of Irish prisoners in the UK is when a prisoner might be released ‘on licence.’ No such regime exists in Ireland and so in the case of <i>Sweeney v Governor of Loughan House</i>,¹¹² Mr.</p>	<p>these cases and a coherent (though not identical) sentence is usually agreed. The authorities come to an informal arrangement for the order to be completed in the other jurisdiction.¹¹⁴</p>	
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¹⁰⁸ Annual Report on the Transfer of Prisoners Acts 1995 and 1997 by the Department of Justice and Equality 2014

www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf page 9

¹⁰⁹ Information from a representative of the Irish Prison Service

¹¹⁰ Ireland, s.7(5) Transfer of Prisoners Act 1995 [17th July, 1995], www.irishstatutebook.ie/1995/en/act/pub/0016/print.html

¹¹¹ Irish Council for Prisoners Overseas, *Factsheet for Prisoners Transferring to Irish Prisons*, www.icpo.ie/wp-content/uploads/2014/06/Factsheet-for-Prisoners-Transferring-to-an-Irish-Prison.pdf

¹¹² *Sweeney v. Governor of Loughan House Open Centre* [2014] IESC 42

¹¹⁴ Information from a representative of the Irish Probation Service

	<p>Sweeney was released on the basis that he had already served 8 years in prison and should serve the remainder of his 16 year sentence in the community, as intended in the UK sentence. As a result of this precedent, there appears, anecdotally, to be a freeze on transfers from the UK into Ireland.¹¹³</p>		
<p>Q.2.17. Are there any specific legislative or policy developments regarding the informed consent to the transfer of particular suspects/sentenced persons (such as children or persons with disabilities) in the issuing state? (e.g. the use of healthcare professionals)</p>	<p>If, at any point during an application to transfer, an officer became aware that that a psychiatric or other type of evaluation was needed, it is likely that the Healthcare Director of the Central Mental Hospital would be asked to assess whether the prisoner was fit to be detained in a prison environment.¹¹⁵ As mentioned above, applications by a legal representative or by any person considered appropriate by the Minister for Justice and Equality will be accepted in cases where someone is unable to apply because of their age or physical or mental condition.¹¹⁶</p>	<p>There is no specific legislative or policy developments in the area as it is an informal policy and transfers are undertaken through an informal process through the Probation Service.¹¹⁷</p>	

¹¹³ Information from a representative of the Irish Council for Prisoners Overseas

¹¹⁵ Information from a representative of the Irish Prison Service

¹¹⁶ Ireland, s. 4(2) and s. 6(3)(d) Transfer of Sentenced Persons Act 1995 [17th July, 1995] www.irishstatutebook.ie/1995/en/act/pub/0016/print.html

¹¹⁷ Information from a representative of the Irish Probation Service

Q3. DECISION ON TRANSFER			
Q3.1. Are the following factors considered while deciding on forwarding a judgment or decision in the issuing state?			
<ul style="list-style-type: none"> The likely impact on the social rehabilitation of the suspect/sentenced person? 	<p>As the Irish Council for Prisoners Overseas notes, family visits while in prison are essential in ensuring that people have the best opportunity at reintegration on their release from prison. In this respect, the consideration of close family ties appears to be the main factor for approving a transfer.¹¹⁸</p>	<p>Interviewee notes that social rehabilitation is much more likely when someone is transferred back to their home country, as family ties encourage them to comply with probation orders.¹¹⁹</p>	
<ul style="list-style-type: none"> Fundamental rights implications (such as the right to family life, right to education)? 	<p>The consideration of close family ties appears to be the main factor for approving a transfer.¹²⁰</p>	<p>Interviewee notes that social rehabilitation is much more likely when someone is transferred back to their home country, as family ties encourage them to comply with probation orders.¹²¹</p>	
<ul style="list-style-type: none"> Others? Please specify. 			
<p>Q3.2: While deciding on the transfer, are there any specific criteria/guidelines on the factors considered to be relevant for the purposes of (social) rehabilitation in</p>	<p>No specific criteria/guidelines. The Annual Report makes reference to “government policy” that <i>“wherever possible prisoners should be permitted to serve their</i></p>	<p>There are no specific guidelines and the procedure is generally informal, but a case is prepared by the Probation Service considering different factors.¹²⁵</p>	

¹¹⁸ Information from a representative of the Irish Council for Prisoners Overseas

¹¹⁹ Information from a representative of the Irish Probation Service

¹²⁰ Information from a representative of the Irish Council for Prisoners Overseas

¹²¹ Information from a representative of the Irish Probation Service

¹²⁵ Information from a representative of the Irish Probation Service

<p>the issuing state? Please provide any document containing those criteria/guidelines and specify whether the following factors are considered:</p>	<p><i>sentences close to their families</i>¹²²</p> <p>It also mentions that “<i>a copy of the court judgment, a copy of the law upon which it is based, sentence administration particulars and medical/social reports</i>” reports from An Garda Siochana and police forces in the other State are exchanged¹²³. In practice, pre-sentence reports would be provided and close family ties are the main consideration.¹²⁴</p>		
<ul style="list-style-type: none"> Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)? 	<p>The Annual Report makes reference to “government policy” that “<i>wherever possible prisoners should be permitted to serve their sentences close to their families</i>”¹²⁶</p> <p>Pre-sentence reports would contain this information.¹²⁷</p>	<p>This is the main consideration, and if someone has the support of their family, a transfer will generally follow. Whether the person has a base in the community is also considered.¹²⁸</p>	

¹²² Annual Report on the Transfer of Prisoners Acts 1995 and 1997 by the Department of Justice and Equality 2014
www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf at page 3

¹²³ Annual Report on the Transfer of Prisoners Acts 1995 and 1997 by the Department of Justice and Equality 2014
www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf

¹²⁴ Information from a representative of the Irish Prison Service

¹²⁶ Annual Report on the Transfer of Prisoners Acts 1995 and 1997 by the Department of Justice and Equality 2014
www.justice.ie/en/JELR/TOSP%20Annual%20Report%202014%20English.pdf/Files/TOSP%20Annual%20Report%202014%20English.pdf at page 3

¹²⁷ Information from a representative of the Irish Council for Prisoners Overseas

¹²⁸ Information from a representative of the Irish Probation Service

<ul style="list-style-type: none"> Criminal history and criminal ties? 	<p>Garda report contains information on any outstanding offences.¹²⁹ While this is an important factor in the decision, the primary factor will be family ties in the executing state.¹³⁰</p>	<p>This is not considered with regards to transfer of persons under probation orders.¹³¹</p>	
<ul style="list-style-type: none"> Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)? 	<p>Pre-sentence reports would contain this information, although it is not the most important consideration for the decision¹³²</p>	<p>Humanitarian concerns and the best interests of the potential transferee are considered.¹³³</p>	
<ul style="list-style-type: none"> Detention conditions (e.g. issues of overcrowding or availability of courses, such as the <i>Modulos</i> in Spain which has separate units to promote a progressive accountability of inmates) 	<p>It does not appear from the interviews that this is a standard consideration.</p>	<p>Not applicable to this FD</p>	
<ul style="list-style-type: none"> Others? 			
<p>Q.3.3. Are the following persons/entities consulted in the evaluation of the likelihood of social rehabilitation by the issuing state:</p>			
<ul style="list-style-type: none"> Probation agencies or similar entities in the issuing state? 	<p>One of the reports required to affect a transfer into the State is a probation report detailing the likelihood of family support.¹³⁴</p>	<p>Probation agencies prepare a case on the potential transferee detailing a number of factors.¹³⁵</p>	

¹²⁹ Information from a representative of the Irish Council for Prisoners Overseas

¹³⁰ Information from a representative of the Irish Council for Prisoners Overseas

¹³¹ Information from a representative of the Irish Probation Service

¹³² Information from a representative of the Irish Council for Prisoners Overseas

¹³³ Information from a representative of the Irish Probation Service

¹³⁴ Information from a representative of the Irish Council for Prisoners Overseas

¹³⁵ Information from a representative of the Irish Probation Service

<ul style="list-style-type: none"> • The competent authorities in the executing state? 	There is no evidence of such consultation in the case of outward transfers.	The competent authority is the Probation Service who are consulted ¹³⁶	
<ul style="list-style-type: none"> • The suspect/sentenced person? 	There is no evidence of such consultation in the case of outward transfers.	The sentenced person would be consulted as part of the process.	
<ul style="list-style-type: none"> • The family of the suspect/sentenced persons, especially with regard to child offenders? 	The family is consulted to ascertain whether they will visit the prisoner in the event of transfer. ¹³⁷	Probation consults with the family of the sentenced person in order to ascertain the level of support they will receive in the event of a transfer. ¹³⁸	
<ul style="list-style-type: none"> • Any other person/entity? 			
<p>Q3.4. Are there any specific legislative or policy developments regarding the evaluation of the likelihood of social rehabilitation of particular suspects/sentenced persons (such as children or persons with disabilities) by the issuing state?</p>	The operation of the law in this area is based on the Council of Europe Convention on the Transfer of Sentenced Persons 1983 ¹³⁹ . The domestic legislation giving effect to this Convention is the Transfer of Sentenced Persons Act 1995 and the Transfer of Sentenced Persons (Amendment) Act 1997. The Transfer of Execution of Sentences Act 2005 gives effect to Article 2 of the Additional Protocol to the	<p>There is currently no domestic formal legal framework governing the operation of transfer of noncustodial sentences and probation orders.</p> <p>The Criminal Law Probation Supervision Mutual Recognition (Mutual Recognition of Probation Judgments and Decisions) Bill will give effect to FD 2008/947 on the application of the principle of mutual recognition to judgments</p>	

¹³⁶ Information from a representative of the Irish Probation Service

¹³⁷ Information from a representative of the Irish Council for Prisoners Overseas

¹³⁸ Information from a representative of the Irish Probation Service

¹³⁹ Council of Europe, Convention on the transfer of sentenced persons, CETS No. 112, 1983. Available at: conventions.coe.int/Treaty/en/Treaties/Word/112.doc

	<p>Convention on the Transfer of Sentenced Persons 1983¹⁴⁰. The Transfer of Sentenced Persons and Transfer of Execution of Sentences Bill will repeal and replace the 1995, 1997 and 2005 Acts and give effect to Council Decision 2008/909/JHA. In responding to a relatively recent Parliamentary Question on the issue, the then Minister for Justice responded as follows:</p> <p><i>“Legislation will be required to give effect to the provisions of EU Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. It is expected that Government approval for the required legislation will be sought later this year [that was 2013]. It is envisaged that</i></p>	<p>and probation decisions with a view to the supervision of probation measures and alternative sanctions. It has been noted in the course of this research that although this is an informal arrangement, it enjoys success because of good interpersonal relationships and cooperation between agencies in different jurisdictions.¹⁴³ In responding to a recent Parliamentary Question on the issue, the Minister for Justice responded as follows:</p> <p><i>The fact that a person who has committed an offence in Ireland is from another jurisdiction will not prevent a court, when sentencing the person, from imposing the sanction it considers appropriate in all the circumstances of the case, subject to the maximum penalty provided in law for the offence concerned. An offender who is subject to a community service order will be required to reside in the State while performing the unpaid</i></p>	
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¹⁴⁰ Council of Europe, Additional Protocol to the Convention on the Transfer of Sentenced Persons, CETS No. 167, 1997. Available at: conventions.coe.int/Treaty/en/Treaties/Html/167.htm

¹⁴³ Information from a representative of the Irish Probation Service

	<p><i>a Bill will be published in 2014. Under an existing 1983 Council of Europe Convention, to which Ireland is party, individuals convicted of an offence in another Convention state, and for which he or she has received a custodial sentence, may be transferred to their home state to serve that sentence. The Framework Decision seeks to extend the circumstances in which a person may serve a custodial sentence, imposed in another EU state, in their home state. Whereas the 1983 Convention provides for the physical transfer of the person from the sentencing state to their home state, the Framework Decision, inter alia , permits the transfer of the sentence where the person subject to that sentence is in either the issuing state or the state being asked to execute the sentence. Moreover, the consent of the sentenced person will not be required where the request for execution of the sentence is sent to that</i></p>	<p><i>work required by the order. This is provided for by section 6 of the Criminal Justice (Community Service) Act 1983, as substituted by section 5 of the Criminal Justice (Community Service) (Amendment) Act 2011, which requires a community service order to specify the district of residence, where made by the District Court, or the circuit of residence, where made by the Circuit Court, in which the offender resides or will reside while performing work under the order. The Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Bill, which is currently being drafted, will facilitate the enforcement in other EU Member States of community sanctions imposed by the Irish courts on persons who are ordinarily resident in other Member States. The Bill will give effect to EU Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments</i></p>	
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	<p><i>person's state of nationality. However, there is a restriction on the application of the Framework Decision insofar as it applies to Ireland. Under article 28.2 of the instrument, a member state may make a declaration that existing arrangements will continue to apply in relation to judgements delivered prior to 5 December 2011. Ireland has made such a declaration.”</i></p> <p>The recent case of <i>Sweeney v. Governor of Loughan House Open Centre</i> [2014] IESC 42¹⁴¹ states the current situation in Irish law: “<i>Council Framework Decision 2008/909/JHA (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) (“the Framework Decision”)</i>”, while</p>	<p><i>and probation decisions with a view to the supervision of probation measures and alternative sanctions. The Framework Decision is based on the principle of mutual recognition by EU Member States of judicial decisions in criminal matters. It provides for cross-border supervision of probation measures and alternative sanctions, such as probation, community service, suspended sentences and temporary release. The Framework Decision is intended to make it easier to impose and enforce such measures and sanctions on non-residents by providing legislative arrangements for Member States to recognise and supervise probation measures and alternative sanctions imposed in another Member State. I hope to publish the Bill early next year with a view to its</i></p>	
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¹⁴¹ www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IESC/2014/S42.html&query=Sweeney+and+v.+and+Governor+and+of+and+Loughan+and+House+and+Open+and+Centre&method=boolean

	<i>drafted to re-place the Convention, has not been given effect in Irish Law to date¹⁴².</i>	<i>enactment during the first half of the year¹⁴⁴.</i>	
Q3.5. Is additional information, other than that required in the certificate (for which the standard form is given in Annex I of the three FDs), provided to the competent authorities of the executing state while forwarding the judgment or decision? If yes, please specify if pre-sentence reports are forwarded.	In 2013 additional procedures were introduced whereby medical information on the transferee is requested from the issuing state in order to assist with the transfer, placement and future sentence management of all prisoners transferring to Ireland. ¹⁴⁵	Pre-sentence reports are forwarded. ¹⁴⁶	
Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?	The Irish Probation Service would provide an assessment report and pre-sentence report in another language if required. If a translator or interpreter is required in order to complete the report this would be provided by the court. ¹⁴⁷	The Irish Probation Service will directly liaise with the probation service of the other jurisdiction and would provide an assessment report and pre-sentence report in another language if required. If a translator or interpreter is required in order to complete the report this would be provided by the court. ¹⁴⁸	
Q3.7. Are there specific measures, as required by Article 4 (6) FD 909, which constitute the basis on which the competent authorities in the executing State have to take their decisions	According to the Transfer of Sentenced Persons Acts, the following criteria must be satisfied before the transfer can be made:		

¹⁴² In para 2.5 of the judgement

¹⁴⁴ Kildarestreet.com (4 November 2014), <https://www.kildarestreet.com/wrans/?id=2014-11-04a.1120&s=mutual+recognition#g1122.r>

¹⁴⁵ Council of Europe, *Ireland – national procedures for transfer of sentenced persons*, www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/Ireland%20National%20Procedures%20for%20transfer.pdf

¹⁴⁶ Information from a representative of the Irish Probation Service

¹⁴⁷ Information from a representative of the Irish Probation Service

¹⁴⁸ Information from a representative of the Irish Probation Service

<p>whether or not to consent to the forwarding of the judgement and the certificate (where required)?</p>	<p>(3) Subject to subsection (4) of this section, the Minister may consent to a request under subsection (1) or subsection (2) of this section if the Minister is satisfied that the following requirements have been fulfilled:</p> <p>(a) that the sentenced person concerned is, for the purposes of the Convention, regarded by the State as a national of the State and, for the purposes of this paragraph, a national of another state shall be regarded as a national of the State where it considers the transfer of the national appropriate having regard to any close ties which the national has with the State;</p> <p>(b) that the order under which the sentence concerned was imposed on the sentenced person is final;</p> <p>(c) that, at the time of the receipt of the request for the transfer concerned, the sentenced person had at least 6 months of the</p>		
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	<p>sentence concerned to serve or the sentence was of indeterminate length;</p> <p>(d) that the sentenced person or, in a case where the Minister or the sentencing state considers it necessary because of the age or physical or mental condition of the sentenced person, the legal representative of the sentenced person or any other person considered by the Minister or the sentencing state to be an appropriate person for the purpose, consents in writing to the transfer;</p> <p>(e) that the acts or omissions constituting the offence concerned would, if done or made in, or on the territory of, the State constitute an offence under the law of the State; and</p> <p>(f) that the sentencing state agrees to the transfer.</p> <p>(4) If the Minister considers that exceptional circumstances exist</p>		
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	<p>which would warrant a transfer specified in subsection (1) or subsection (2) of this section in a case where the sentenced person has less than 6 months of the sentence to serve, the requirement referred to in paragraph (c) of subsection (3) of this section shall not apply.</p> <p>(5) The Minister may not consent to a request under subsection (1) or subsection (2) of this section, unless the Minister is satisfied that all reasonable steps have been taken to inform the sentenced person concerned in writing in his or her own language—</p> <p>(a) of the substance, so far as relevant to the person's case, of the international arrangements in accordance with which it is proposed to transfer him or her,</p> <p>(b) of the effect in relation to the person of any warrant which may be issued in respect of him or her under section 7 of this Act,</p>		
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	<p>(c) of the effect in relation to the person of the law relating to his or her detention under such a warrant, and</p> <p>(d) of the powers of the Minister under section 9 of this Act.</p> <p>(6) A certificate purporting to be signed by the Minister or by a person duly authorised by the Minister under section 15 (4) of the Ministers and Secretaries Act, 1924 , to authenticate it and to certify that—</p> <p>(a) as respects the proposed transfer into the State of a sentenced person following a request under subsection (1) of this section, the Minister is satisfied that the requirements specified in paragraphs (a), (b), (d), (e) and (f) and, where applicable, (c) of subsection (3) of this section have been fulfilled, and</p>		
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	<p>(b) the Minister has given his or her consent to the transfer under this section,</p> <p>shall, without proof of the signature of the person purporting to sign the certificate or that the person was the Minister or a person authorised to sign it, be evidence, unless the contrary is shown, of the matters stated in the certificate.¹⁴⁹</p>		
<p>Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:</p>	<p>There did not appear to be a specific data protection protocol governing the information exchange. It is expected that the normal provisions of the Data Protection Acts would apply¹⁵⁰.</p>	<p>Currently, as all requests are on the basis of sentenced person commenced request to transfer, there are no formal rules specifically relating to the data protection of the information exchanges as it is shared by express consent. A more formal and detailed process complying with all requirements of FD 947 and informed by current experience will be implemented as part of the transposing of FD 947 into Irish legislation.¹⁵¹</p>	

¹⁴⁹ Ireland, s. 6(3), Transfer of Sentenced Persons Act 1995 [17th July, 1995] www.irishstatutebook.ie/1995/en/act/pub/0016/print.html

¹⁵⁰ Data Protection Commissioner, <https://www.dataprotection.ie/docs/LAW-ON-DATA-PROTECTION/795.htm>

¹⁵¹ Information from a representative of the Irish Probation Service

<ul style="list-style-type: none"> • National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state? 	<p>There did not appear to be a specific data protection protocol governing the information exchange. It is expected that the normal provisions of the Data Protection Acts would apply¹⁵².</p>	<p>Currently, as all requests are on the basis of sentenced person commenced request to transfer, there are no formal rules specifically relating to the data protection of the information exchanges as it is shared by express consent. A more formal and detailed process complying with all requirements of FD 947 and informed by current experience will be implemented as part of the transposing of FD 947 into Irish legislation.¹⁵³</p>	
<ul style="list-style-type: none"> • Authorities in the issuing and executing state? 	<p>There did not appear to be a specific data protection protocol governing the information exchange. It is expected that the normal provisions of the Data Protection Acts would apply¹⁵⁴.</p>	<p>Currently, as all requests are on the basis of sentenced person commenced request to transfer, there are no formal rules specifically relating to the data protection of the information exchanges as it is shared by express consent. A more formal and detailed process complying with all requirements of FD 947 and informed by current experience will be implemented as part of the transposing of FD 947 into Irish legislation.¹⁵⁵</p>	

¹⁵² Data Protection Commissioner, <https://www.dataprotection.ie/docs/LAW-ON-DATA-PROTECTION/795.htm>

¹⁵³ Information from a representative of the Irish Probation Service

¹⁵⁴ Data Protection Commissioner, <https://www.dataprotection.ie/docs/LAW-ON-DATA-PROTECTION/795.htm>

¹⁵⁵ Information from a representative of the Irish Probation Service

Q4. VICTIMS			
Q4.1. Do the victims have the right to receive the following information regarding the transfer from the issuing state:			
<ul style="list-style-type: none"> The decision to transfer 	<p>There is no express right to information regarding prison transfers for victims under the current legislative or policy framework. However, there are guidelines for treatment of victims in the victim charters of the Irish Prison Service¹⁵⁶, the Probation Service¹⁵⁷ and the Garda Síochána.¹⁵⁸ These guidelines do not constitute a right to information for the victim. The EU Victims Directive, which is expected to be implemented domestically soon¹⁵⁹, also has general guidelines for the provision of information to victims. It does not, however, mention expressly the issue of prison transfers.¹⁶⁰</p>	<p>There is no express right to information regarding prison transfers for victims under the current legislative or policy framework. However, there are guidelines for treatment of victims in the victim charters of the Irish Prison Service¹⁶¹, the Probation Service¹⁶² and the Garda Síochána.¹⁶³ These guidelines do not constitute a right to information for the victim. The EU Victims Directive, which is expected to be implemented domestically soon¹⁶⁴, also has general guidelines for the provision of information to victims. It does not, however, mention expressly the issue of prison transfers.¹⁶⁵</p>	

¹⁵⁶ Victim of Crimes Office, The Irish Prison Service, <http://www.irishprisons.ie/index.php/victim-liaison-charter>

¹⁵⁷ Victim of Crimes Office, The Irish Probation Service www.victimsofcrimeoffice.ie/en/vco/Chapter%205.pdf/Files/Chapter%205.pdf

¹⁵⁸ Victim of Crimes Office, The Garda Síochána (police) www.victimsofcrimeoffice.ie/en/vco/Chapter%202.pdf/Files/Chapter%202.pdf

¹⁵⁹ EU Victims Directive, www.eujusticia.net/images/uploads/pdf/Victims_Directive_36_page.pdf

¹⁶⁰ Directive 2012/29/EU eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN

¹⁶¹ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%206.pdf/Files/Chapter%206.pdf

¹⁶² Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%205.pdf/Files/Chapter%205.pdf

¹⁶³ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%202.pdf/Files/Chapter%202.pdf

¹⁶⁴ EU Victims Directive, www.eujusticia.net/images/uploads/pdf/Victims_Directive_36_page.pdf

¹⁶⁵ Directive 2012/29/EU eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN

<ul style="list-style-type: none"> The status of the transfer 	<p>There is no express right to information regarding prison transfers for victims under the current legislative or policy framework. However, there are guidelines for treatment of victims in the victim charters of the Irish Prison Service¹⁶⁶, the Probation Service¹⁶⁷ and the Garda Síochána.¹⁶⁸ These guidelines do not constitute a right to information for the victim. The EU Victims Directive, which is expected to be implemented domestically soon¹⁶⁹, also has general guidelines for the provision of information to victims. It does not, however, mention expressly the issue of prison transfers.¹⁷⁰</p>	<p>There is no express right to information regarding prison transfers for victims under the current legislative or policy framework. However, there are guidelines for treatment of victims in the victim charters of the Irish Prison Service¹⁷¹, the Probation Service¹⁷² and the Garda Síochána.¹⁷³ These guidelines do not constitute a right to information for the victim. The EU Victims Directive, which is expected to be implemented domestically soon¹⁷⁴, also has general guidelines for the provision of information to victims. It does not, however, mention expressly the issue of prison transfers.¹⁷⁵</p>	
<ul style="list-style-type: none"> Other? Please specify. 	<p>Ireland and many other member states have a poor record for providing victims with</p>	<p>Ireland and many other member states have a poor record for providing victims with</p>	

¹⁶⁶ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%206.pdf/Files/Chapter%206.pdf

¹⁶⁷ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%205.pdf/Files/Chapter%205.pdf

¹⁶⁸ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%202.pdf/Files/Chapter%202.pdf

¹⁶⁹ Victim of Crimes Office, www.eujusticia.net/images/uploads/pdf/Victims_Directive_36_page.pdf

¹⁷⁰ Directive 2012/29/EU eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN accessed 9th June

¹⁷¹ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%206.pdf/Files/Chapter%206.pdf

¹⁷² Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%205.pdf/Files/Chapter%205.pdf

¹⁷³ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Chapter%202.pdf/Files/Chapter%202.pdf

¹⁷⁴ EU Victims Directive , www.eujusticia.net/images/uploads/pdf/Victims_Directive_36_page.pdf

¹⁷⁵ Directive 2012/29/EU eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN accessed 9th June

	<p>information, with many victims being unaware of their entitlements, and having to research their entitlements themselves.¹⁷⁶ The right to receive information in the 2012 Directive places the onus on a “competent authority” to “offer” the information to them and ‘without unnecessary delay’.</p>	<p>information, with many victims being unaware of their entitlements, and having to research their entitlements themselves.¹⁷⁷ The right to receive information in the 2012 Directive places the onus on a “competent authority” to “offer” the information to them and ‘without unnecessary delay’.</p>	
<p>Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:</p>	<p>There is no express procedure to provide information to victims in the context of transfer of sentenced persons. There is no specific mention of victims in any of the existing legislation. The Prison Service, the Garda Síochána and the Probation Service have guidelines in their victim charters regarding the treatment of victims of crimes. These guidelines do not constitute a right to information for the victim. All of this information is available from the Victims of Crime Office¹⁷⁸.</p>	<p>There is no express procedure to provide information to victims in the context of transfer of sentenced persons. There is no specific mention of victims in any of the existing legislation. The Prison Service, the Garda Síochána and the Probation Service have guidelines in their victim charters regarding the treatment of victims of crimes. These guidelines do not constitute a right to information for the victim. All of this information is available from the Victims of Crime Office¹⁷⁹.</p>	

¹⁷⁶ *The Implementation and Enforcement of the Victims’ Directive in Ireland: Ensuring the Consistency of Victims’ Rights for all Victims of Crime*, Victims Rights Alliance, <https://victimsrightsalliancedotcom.files.wordpress.com/2014/10/vra-report.pdf>

¹⁷⁷ *The Implementation and Enforcement of the Victims’ Directive in Ireland: Ensuring the Consistency of Victims’ Rights for all Victims of Crime*, Victims Rights Alliance, <https://victimsrightsalliancedotcom.files.wordpress.com/2014/10/vra-report.pdf>

¹⁷⁸ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

¹⁷⁹ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

<ul style="list-style-type: none"> • Is the information provided upon request of the victim? 	<p>According to the Irish Prison Service Victim Charter, IPS will tell victims about relevant developments regarding the prisoner’s sentence on request – such as transfers between prisons or parole board hearings (for prisoners sentenced to eight years or more).¹⁸⁰</p>	<p>The Probation Service will explain the meaning of different probation orders, upon request.¹⁸¹</p>	
<ul style="list-style-type: none"> • Who responsible for providing this information? 	<p>The Irish Prison Service provides the information.</p>	<p>The Probation Service provides the information.</p>	
<ul style="list-style-type: none"> • Is it a verbal or written communication? 	<p>It is unclear from the victim charter what channels of communication are used. No established practice was identified from the interviews or victims charters.</p>	<p>The Probation Service will provide information face-to-face, by telephone or in writing, depending on the circumstances.¹⁸²</p>	
<p>Q4.3. Do the victims have the right to be heard concerning the transfer (in the state you are describing, as issuing or executing state)? (e.g. through submitting an oral or written response)</p>	<p>No, victims have no express rights regarding the transfer and while the Victims Charters of each of the criminal justice agencies speak generally of a right to be informed, there is no mention of any right to be heard.</p>	<p>The Probation Service will work with the victim on producing a victim impact report, although this is on the request of the court and is not a right. This is also of general application and not specific to the context of transfers.¹⁸³</p>	

¹⁸⁰ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

¹⁸¹ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

¹⁸² Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

¹⁸³ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

<p>Q4.4. Do the victims have any other rights concerning the transfer (in the state you are describing, as issuing or executing state)? Please specify.</p>	<p>As noted, none of the Charters specifically deal with the issue of cross jurisdiction transfer.</p>	<p>As noted, none of the Charters specifically deal with the issue of cross jurisdiction transfer.</p>	
<p>Q4.5. Do the victims have access to translators/interpreter in order to be kept fully informed of the transfer (in the state you are describing, as issuing or executing state)?</p>	<p>The Courts Service and the Garda Síochána both mention in their victim charters that translators or interpreters will be provided if necessary. This is not relating specifically to transfers but in general.¹⁸⁴</p>	<p>The Courts Service and the Garda Síochána both mention in their victim charters that translators or interpreters will be provided if necessary. This is not relating specifically to transfers but in general.¹⁸⁵</p>	

¹⁸⁴ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

¹⁸⁵ Victim of Crimes Office, www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006

<p>Q4.6. Do the victims have the right to be informed of the suspect/sentenced person's release (in the state you are describing, as issuing or executing state)?</p>	<p>The victims' rights Directive expressly deals with the right of a victim to information on release or escape of an offender. Article 6(5) of the Directive provides that a victim shall be notified in the event of the offenders' release or escape from detention, and notification should occur with no unnecessary delay. Article 6(6) goes on to provide that on request victims can receive the information outlined in paragraph 5, at least in cases where there is an identified risk or a danger to them from the offender. Para 32 of the Directive further outlines that specific information on the release or escape of the offender should be given to victims (on request), at least in instances where there is an identifiable risk of harm to the victim. This is unless providing this information to the victim would pose an identifiable risk of harm to the offender.</p>	<p>While the Victims' Rights Directive expressly deals with the right of a victim to information on release or escape of an offender, this is guaranteed in cases where there is an identified risk or a danger to them from the offender.¹⁸⁶ In these circumstances, it is unclear if, by the nature of offences attracting probation orders, there would be sufficient risk to the safety of the victim to guarantee their right to information about the release.</p>	
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¹⁸⁶ Victims' Rights Directive, Article 6(6) eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN