

# **Rehabilitation and mutual recognition – practice concerning EU law on transfer of persons sentenced or awaiting trial May 2015**

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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:**

- **England and Wales**

In England and Wales, the available alternative sanctions are a community order, a suspended sentence, a deferred sentence and a conditional discharge.

A community sentence is imposed by a community order which is provided for in the Criminal Justice Act 2003.<sup>1</sup> This order can impose one or more of the following requirements: (a) an unpaid work requirement; (b) an activity requirement; (c) a programme requirement; (d) a prohibited activity requirement; (e) a curfew requirement; (f) an exclusion requirement; (g) a residence requirement; (h) a mental health treatment requirement; (i) a drug rehabilitation requirement; (j) an alcohol treatment requirement; (k) a supervision requirement;<sup>2</sup> or (l) an attendance centre requirement (in a case where the offender is

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<sup>1</sup> HM Government (2003), *Criminal Justice Act 2003*, 20 November 2003, ss. 177-180, available at [www.legislation.gov.uk/ukpga/2003/44/contents](http://www.legislation.gov.uk/ukpga/2003/44/contents). See also HM Government, “Probation”, available at [www.gov.uk/guide-to-probation](http://www.gov.uk/guide-to-probation) (last updated 12 November 2014).

<sup>2</sup> The HM Government (2014), *Offender Rehabilitation Act 2014*, 13 March 2014, available at [www.legislation.gov.uk/ukpga/2014/11/contents](http://www.legislation.gov.uk/ukpga/2014/11/contents) merged the supervision and the activity requirement into a “rehabilitation activity requirement”, which is inserted in s. 200A of the Criminal Justice Act 2003.

aged under 25).<sup>3</sup> Other available alternative sanctions are a suspended sentence of imprisonment<sup>4</sup> and a deferred sentence.<sup>5</sup> A conditional discharge, which means the offender is absolved from punishment if he/she does not commit any further offences during the period stated by the court,<sup>6</sup> is available too.<sup>7</sup>

For *children and young persons*, specific community sentences are available: the court can impose a youth rehabilitation order,<sup>8</sup> a referral order<sup>9</sup> or a reparation order<sup>10</sup> where the offender has to make up for the harm he/she caused.<sup>11</sup> A youth rehabilitation order is an order imposing certain requirements such as supervision, a curfew requirement or a ‘community payback’.<sup>12</sup> A referral order means that the young offender will be referred to a youth offender panel where he/she has to agree to a contract which involves reparation/restoration to the victim or the community and a programme of activities to prevent reoffending.<sup>13</sup>

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<sup>3</sup> HM Government (2003), *Criminal Justice Act 2003*, 20 November 2003, s. 177 (1), available at [www.legislation.gov.uk/ukpga/2003/44/contents](http://www.legislation.gov.uk/ukpga/2003/44/contents). HM Government (2012), *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, 1 May 2012, ss. 72 and 76, available at [www.legislation.gov.uk/ukpga/2012/10/contents](http://www.legislation.gov.uk/ukpga/2012/10/contents) respectively added a foreign travel prohibition and an alcohol abstinence and monitoring requirement, but these are not yet in force.

<sup>4</sup> HM Government (2003), *Criminal Justice Act 2003*, 20 November 2003, s. 189, available at [www.legislation.gov.uk/ukpga/2003/44/contents](http://www.legislation.gov.uk/ukpga/2003/44/contents).

<sup>5</sup> HM Government (2003), *Criminal Justice Act 2003*, 20 November 2003, s. 278 and sch. 23, available at [www.legislation.gov.uk/ukpga/2003/44/contents](http://www.legislation.gov.uk/ukpga/2003/44/contents).

<sup>6</sup> Crown Prosecution Service, “Sentencing”, available at [www.cps.gov.uk/victims\\_witnesses/going\\_to\\_court/sentencing.html](http://www.cps.gov.uk/victims_witnesses/going_to_court/sentencing.html).

<sup>7</sup> HM Government (2000), *Powers of Criminal Courts (Sentencing) Act 2000*, 25 May 2000, s. 12 (1) (b), available at [www.legislation.gov.uk/ukpga/2000/6](http://www.legislation.gov.uk/ukpga/2000/6).

<sup>8</sup> HM Government (2008), *Criminal Justice and Immigration Act 2008*, 8 May 2008, ss. 1-8, available at [www.legislation.gov.uk/ukpga/2008/4/contents](http://www.legislation.gov.uk/ukpga/2008/4/contents). See also further guidance in Youth Justice Board for England and Wales (2010), *The Youth Rehabilitation Order and other Youth Justice Provisions of the Criminal Justice and Immigration Act 2008*, available at <http://yjbpublications.justice.gov.uk/en-gb/scripts/prodView.asp?idproduct=467&eP=>.

<sup>9</sup> HM Government (2000), *Powers of Criminal Courts (Sentencing) Act 2000*, 25 May 2000, ss. 16-20, available at [www.legislation.gov.uk/ukpga/2000/6/contents](http://www.legislation.gov.uk/ukpga/2000/6/contents).

<sup>10</sup> HM Government (2000), *Powers of Criminal Courts (Sentencing) Act 2000*, 25 May 2000, ss. 73-75, available at [www.legislation.gov.uk/ukpga/2000/6/contents](http://www.legislation.gov.uk/ukpga/2000/6/contents).

<sup>11</sup> See also HM Government, “Community sentences – Community sentences if you are under 18”, available at [www.gov.uk/community-sentences/community-sentences-if-you-are-under-18](http://www.gov.uk/community-sentences/community-sentences-if-you-are-under-18) (last updated 12 November 2014).

<sup>12</sup> HM Government (2008), *Criminal Justice and Immigration Act 2008*, 8 May 2008, s. 1 (1), available at [www.legislation.gov.uk/ukpga/2008/4/contents](http://www.legislation.gov.uk/ukpga/2008/4/contents). See also further guidance in Youth Justice Board for England and Wales (2010), *The Youth Rehabilitation Order and other Youth Justice Provisions of the Criminal Justice and Immigration Act 2008*, available at <http://yjbpublications.justice.gov.uk/en-gb/scripts/prodView.asp?idproduct=467&eP=>. See HM Government, “Community sentences – Community payback”, available at [www.gov.uk/community-sentences/community-payback](http://www.gov.uk/community-sentences/community-payback) about community payback.

<sup>13</sup> HM Government Ministry of Justice (2015), ‘Referral Order Guidance’ April 2015, p. 9, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418443/revised-referral-order-guidance.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418443/revised-referral-order-guidance.pdf).

Under the Mental Health Act 1983,<sup>14</sup> an *offender with a mental disorder* can be hospitalised or be placed under guardianship.<sup>15</sup>

- **Northern Ireland**

In Northern Ireland, the available alternative sanctions are a community service order, a probation order, a combination order, a suspended sentence, a deferred sentence and a conditional discharge.

The Criminal Justice (Northern Ireland) Order 1996 makes two alternative sanctions available: the probation order<sup>16</sup> and the community service order<sup>17</sup> (or a combination of both).<sup>18</sup> A probation order implies, with the consent of the offender, supervision by a probation officer for a period between six months and three years.<sup>19</sup> Additional requirements, such as going to an alcohol or drug rehabilitation centre, can be attached to the probation order.<sup>20</sup> A community service order requires the offender to do unpaid work in the community for a period between 40 and 240 hours.<sup>21</sup> Other alternative sanctions are a suspended sentence<sup>22</sup> and a deferred sentence.<sup>23</sup> A conditional discharge is available too.<sup>24</sup>

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<sup>14</sup> HM Government (1983), *Mental Health Act 1983*, 9 May 1983, available at [www.legislation.gov.uk/ukpga/1983/20/contents](http://www.legislation.gov.uk/ukpga/1983/20/contents).

<sup>15</sup> HM Government (1983), *Mental Health Act 1983*, 9 May 1983, ss. 35-40, available at [www.legislation.gov.uk/ukpga/1983/20/contents](http://www.legislation.gov.uk/ukpga/1983/20/contents).

<sup>16</sup> HM Government (1996), *Criminal Justice (Northern Ireland) Order 1996*, 19 December 1996, ss. 10-12, available at [www.legislation.gov.uk/nisi/1996/3160/contents](http://www.legislation.gov.uk/nisi/1996/3160/contents).

<sup>17</sup> HM Government (1996), *Criminal Justice (Northern Ireland) Order 1996*, 19 December 1996, ss. 13-15, available at [www.legislation.gov.uk/nisi/1996/3160/contents](http://www.legislation.gov.uk/nisi/1996/3160/contents).

<sup>18</sup> HM Government (1996), *Criminal Justice (Northern Ireland) Order 1996*, 19 December 1996, s. 15, available at [www.legislation.gov.uk/nisi/1996/3160/contents](http://www.legislation.gov.uk/nisi/1996/3160/contents).

<sup>19</sup> HM Government (1996), *Criminal Justice (Northern Ireland) Order 1996*, 19 December 1996, s. 10 (1), available at [www.legislation.gov.uk/nisi/1996/3160/contents](http://www.legislation.gov.uk/nisi/1996/3160/contents).

<sup>20</sup> See Northern Ireland Government (2014), 'Non custodial sentences - Probation orders', available at [www.nidirect.gov.uk/non-custodial-sentences](http://www.nidirect.gov.uk/non-custodial-sentences).

<sup>21</sup> HM Government (1996), *Criminal Justice (Northern Ireland) Order 1996*, 19 December 1996, s. 13 (1)-(2), available at [www.legislation.gov.uk/nisi/1996/3160/contents](http://www.legislation.gov.uk/nisi/1996/3160/contents).

<sup>22</sup> HM Government (1996), *Criminal Justice (Northern Ireland) Order 1996*, 19 December 1996, s. 23, available at [www.legislation.gov.uk/nisi/1996/3160/contents](http://www.legislation.gov.uk/nisi/1996/3160/contents).

<sup>23</sup> HM Government (1996), *Criminal Justice (Northern Ireland) Order 1996*, 19 December 1996, s. 3, available at [www.legislation.gov.uk/nisi/1996/3160/contents](http://www.legislation.gov.uk/nisi/1996/3160/contents).

<sup>24</sup> See Northern Ireland Government (2014), 'Non custodial sentences - Conditional discharge', available at [www.nidirect.gov.uk/non-custodial-sentences](http://www.nidirect.gov.uk/non-custodial-sentences).

For *children or young persons*, a series of non-custodial sentences such as an attendance centre order,<sup>25</sup> a reparation order,<sup>26</sup> a community responsibility order,<sup>27</sup> or a youth conference order<sup>28</sup> are available.<sup>29</sup> A community responsibility order means that the young offender needs to spend a certain amount of time on practical activities and instruction on citizenship.<sup>30</sup> At a Youth Conference, an action plan will be agreed on for the young offender to make amends to the victim and to prevent reoffending.<sup>31</sup> Other alternatives outside the court system are also available for young offenders such as an informed warning or a restorative caution.<sup>32</sup>

Under the Mental Health (Northern Ireland) Order 1986,<sup>33</sup> both hospitalisation and guardianship exist for *offenders with a mental disorder*.<sup>34</sup>

- **Scotland**

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<sup>25</sup> HM Government (1998), *Criminal Justice (Children) (Northern Ireland) Order 1998*, 24 June 1998, ss. 37-38, available at <http://www.legislation.gov.uk/nisi/1998/1504/contents>.

<sup>26</sup> HM Government (1998), *Criminal Justice (Children) (Northern Ireland) Order 1998*, 24 June 1998, ss. 36A-36D, available at <http://www.legislation.gov.uk/nisi/1998/1504/contents>.

<sup>27</sup> HM Government (1998), *Criminal Justice (Children) (Northern Ireland) Order 1998*, 24 June 1998, ss. 36E-36I, available at <http://www.legislation.gov.uk/nisi/1998/1504/contents>.

<sup>28</sup> HM Government (1998), *Criminal Justice (Children) (Northern Ireland) Order 1998*, 24 June 1998, ss. 36J-36L, available at <http://www.legislation.gov.uk/nisi/1998/1504/contents>.

<sup>29</sup> See Northern Ireland Government (2014), 'Non custodial sentences - Non custodial sentences for young people who offend', available at [www.nidirect.gov.uk/non-custodial-sentences](http://www.nidirect.gov.uk/non-custodial-sentences).

<sup>30</sup> See Northern Ireland Government (2014), 'Non custodial sentences - Non custodial sentences for young people who offend', available at [www.nidirect.gov.uk/non-custodial-sentences](http://www.nidirect.gov.uk/non-custodial-sentences).

<sup>31</sup> Northern Ireland Government (2014), 'Going to a youth conference - What happens at the youth conference?', available at [www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system/youth-justice/sentencing-and-other-consequences-of-youth-crime/going-to-a-youth-conference.htm](http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system/youth-justice/sentencing-and-other-consequences-of-youth-crime/going-to-a-youth-conference.htm).

<sup>32</sup> Northern Ireland Government (2014), 'Dealing with young people outside the court system', available at [www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system/youth-justice/sentencing-and-other-consequences-of-youth-crime/dealing-with-young-people-outside-the-court-system.htm](http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system/youth-justice/sentencing-and-other-consequences-of-youth-crime/dealing-with-young-people-outside-the-court-system.htm).

<sup>33</sup> HM Government (1986), *Mental Health (Northern Ireland) Order 1986*, 26 March 1986, available at [www.legislation.gov.uk/nisi/1986/595/contents](http://www.legislation.gov.uk/nisi/1986/595/contents).

<sup>34</sup> HM Government (1986), *Mental Health (Northern Ireland) Order 1986*, 26 March 1986, ss. 42-46, available at [www.legislation.gov.uk/nisi/1986/595/contents](http://www.legislation.gov.uk/nisi/1986/595/contents).

In Scotland, the available alternative sanctions are a community payback order, a restriction of liberty order, an antisocial behaviour order, a deferred sentence and a conditional discharge.<sup>35</sup>

The Criminal Procedure (Scotland) Act 1995 provides for a community payback order.<sup>36</sup> This order, which came into force in 2011, replaced provisions for community service orders, probation orders and supervised attendance orders.<sup>37</sup> The community payback order can consist of one or more of the following requirements: a) an offender supervision requirement; b) a compensation requirement; c) an unpaid work or other activity requirement; d) a programme requirement; e) a residence requirement; f) a mental health treatment requirement; g) a drug treatment requirement; h) an alcohol treatment requirement; or i) a conduct requirement.<sup>38</sup> Another alternative sanction can be found in the restriction of liberty order,<sup>39</sup> which can restrict the offender's movement in the way the court sees fit.<sup>40</sup> An antisocial behaviour order<sup>41</sup> can be imposed instead of or in addition to any other sentence when the offender has engaged in antisocial behaviour.<sup>42</sup> A deferred sentence<sup>43</sup> and a conditional discharge<sup>44</sup> ("dismiss with an admonition") are available too.

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<sup>35</sup> For more information, see: Scottish Government (2014), 'Criminal Proceedings in Scotland, 2013-14', 16 December 2014, p. 73-74, available at [www.gov.scot/Resource/0046/00469252.pdf](http://www.gov.scot/Resource/0046/00469252.pdf).

<sup>36</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 227A, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>37</sup> Scottish Government, 'Community Payback Orders', available at [www.gov.scot/Topics/archive/law-order/offender-management/CPO](http://www.gov.scot/Topics/archive/law-order/offender-management/CPO).

<sup>38</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 227A (2) (a) - (i), available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>39</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, ss. 245A-245J, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>40</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 245A, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>41</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, ss. 234AA-234K, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>42</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 234AA, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>43</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, ss. 202, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>44</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 246 (1), available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

*Children or young persons* can be referred to the Children's Hearings,<sup>45</sup> which can decide to impose a compulsory supervision order.<sup>46</sup> This is an order which can impose certain requirements, such as the requirement that the child should reside at a specified place or a movement restriction requirement.<sup>47</sup>

Under the Criminal Procedure (Scotland) Act 1995, a compulsory treatment order,<sup>48</sup> hospitalisation and guardianship are available for *offenders with a mental disorder*.<sup>49</sup>

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<sup>45</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 49, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents); HM Government (2011), *Children's Hearings (Scotland) Act 2011*, 6 January 2011, available at [www.legislation.gov.uk/asp/2011/1/contents](http://www.legislation.gov.uk/asp/2011/1/contents). See more at Children's Hearings Scotland, available at [www.chscotland.gov.uk](http://www.chscotland.gov.uk). Generally, the Children's Hearings are used for young people under the age of 16: see Lightowler, C., Orr, D. and Vaswani, N., Centre for Youth & Criminal Justice (2014), *Youth Justice in Scotland: Fixed in the past or fit for the future?*, September 2014, p. 7, available at [www.cycj.org.uk/wp-content/uploads/2014/09/Youth-Justice-in-Scotland.pdf](http://www.cycj.org.uk/wp-content/uploads/2014/09/Youth-Justice-in-Scotland.pdf).

<sup>46</sup> Children's Hearings Scotland, 'How does the Children's Hearings System work?', available at [www.chscotland.gov.uk/the-childrens-hearings-system/how-does-the-childrens-hearings-system-work/](http://www.chscotland.gov.uk/the-childrens-hearings-system/how-does-the-childrens-hearings-system-work/).

<sup>47</sup> HM Government (2011), *Children's Hearings (Scotland) Act 2011*, 6 January 2011, s. 83 (2), available at [www.legislation.gov.uk/asp/2011/1/contents](http://www.legislation.gov.uk/asp/2011/1/contents).

<sup>48</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, ss. 57A-57D, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>49</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, ss. 58-59, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).



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

- **England and Wales**

In England and Wales, an accused may be granted bail under the Bail Act 1976.<sup>50</sup> There exists a right to bail, unless the court finds there to be substantial grounds for believing that the accused would a) fail to surrender to custody; b) commit an offence while on bail; or c) interfere with witnesses or otherwise obstruct the course of justice.<sup>51</sup> The accused can also be denied bail in other cases, such as when he/she is already on bail, for his/her own protection or, when the accused is a *child or young person*, his/her own welfare.<sup>52</sup> When the accused is charged with rape, homicide or has been convicted for one of these in the past, bail is not permitted unless the court finds there to be exceptional circumstances.<sup>53</sup>

Bail can be unconditional or there can be conditions attached, such as, for example, living at a particular address, giving your passport to the police or not entering certain localities.<sup>54</sup> In case of drug abuse, bail can be denied or an assessment can be included as a condition of bail.<sup>55</sup> There also exists a possibility of the condition of electronic monitoring (EM) on bail, often combined with a curfew condition.<sup>56</sup> EM involves attaching an electronic tag to the accused which monitors his/her proximity to a Home Monitoring Unit, placed by G4S,<sup>57</sup> which can check whether the defendant is complying with his or her curfew

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<sup>50</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, available at [www.legislation.gov.uk/ukpga/1976/63/contents](http://www.legislation.gov.uk/ukpga/1976/63/contents). See also HM Government Ministry of Justice, 'Response to the European Commission's Green Paper on the application of EU criminal justice legislation in the field of detention', available at [http://ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/uk\\_ministry\\_of\\_justice\\_response\\_en.pdf](http://ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/uk_ministry_of_justice_response_en.pdf) and Ormerod, D. *et al* (ed.) (2015), *Blackstone's Criminal Practice*, Oxford, Oxford University Press, pp. 1406-1473.

<sup>51</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, sch. 1 para. 2 (a) - (c), available at [www.legislation.gov.uk/ukpga/1976/63/contents](http://www.legislation.gov.uk/ukpga/1976/63/contents).

<sup>52</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, sch. 1 paras. 2A-6, available at [www.legislation.gov.uk/ukpga/1976/63/contents](http://www.legislation.gov.uk/ukpga/1976/63/contents).

<sup>53</sup> HM Government (1994), *Criminal Justice and Public Order Act 1994*, 3 November 1994, s. 25, available [www.legislation.gov.uk/ukpga/1994/33/contents](http://www.legislation.gov.uk/ukpga/1994/33/contents). See also Ormerod, D. *et al* (ed.) (2015), *Blackstone's Criminal Practice*, Oxford, Oxford University Press, pp. 1408-1409.

<sup>54</sup> HM Government, 'Being charged with a crime – Bail', available at [www.gov.uk/charged-crime/bail](http://www.gov.uk/charged-crime/bail) (last updated 12 November 2014). See also other supervision measures enumerated in Fair Trials International (2011), 'Detained without trial: Fair Trials International's response to the European Commission's Green Paper on detention', October 2011, pp. 49-50, available at [www.fairtrials.org/documents/DetentionWithoutTrialFullReport.pdf](http://www.fairtrials.org/documents/DetentionWithoutTrialFullReport.pdf); Ormerod, D. *et al* (ed.) (2015), *Blackstone's Criminal Practice*, Oxford, Oxford University Press, pp. 1421-1422.

<sup>55</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, s. 3 (6C)-(6F) and sch. 1 paras. 6A-6C, inserted by HM Government (2003), *Criminal Justice Act 2003*, 20 November 2003, s. 19, available at [www.legislation.gov.uk/ukpga/2003/44/contents](http://www.legislation.gov.uk/ukpga/2003/44/contents). See also Ormerod, D. *et al* (ed.) (2015), *Blackstone's Criminal Practice*, Oxford, Oxford University Press, pp. 1415 and 1426.

<sup>56</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, ss. 3AA, 3AB and 3AC, available at [www.legislation.gov.uk/ukpga/1976/63/contents](http://www.legislation.gov.uk/ukpga/1976/63/contents). See also Ormerod, D. *et al* (ed.) (2015), *Blackstone's Criminal Practice*, Oxford, Oxford University Press, p. 1423.

<sup>57</sup> G4S United Kingdom, 'Who we are', available at [www.g4s.uk.com/en-GB/Who%20we%20are/](http://www.g4s.uk.com/en-GB/Who%20we%20are/).

hours.<sup>58</sup> Section 3AB states that EM is only allowed in case where the accused would otherwise not have been granted bail.<sup>59</sup> There is no statutory limit to the number of daily curfew hours or the length of EM but in practice these are around nine to 12 hours overnight, and the courts should take into account issues such as the accused's working hours which would affect curfew times.<sup>60</sup>

*For children and young persons*, bail and EM are available too.<sup>61</sup> According to Section 3AA of the Bail Act 1976, EM can only be imposed when 1) the child is 12 or older; 2) he/she is charged with a serious offence (listed in the Act); 3) EM is available in the relevant area; and 4) a youth offending team has informed the court that EM is suitable.<sup>62</sup> Furthermore, the child can be remanded to non-secure local authority accommodation.<sup>63</sup>

- **Northern Ireland**

In Northern Ireland, bail is available but is not defined in a unified act.<sup>64</sup> Bail can only be refused on the following five grounds: 1) risk that the accused will fail to appear for trial; 2) risk that the accused will interfere with the course of justice; 3) risk that the accused will commit further offences; 4) risk of

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<sup>58</sup> G4S United Kingdom, 'Electronic monitoring', available at [www.g4s.uk.com/en-GB/What%20we%20do/Services/Care%20and%20justice%20services/Electronic%20monitoring/](http://www.g4s.uk.com/en-GB/What%20we%20do/Services/Care%20and%20justice%20services/Electronic%20monitoring/). Curfew means that the defendant has to be home or at another specified place during certain hours.

<sup>59</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, s. 3AB, inserted by HM Government (2008), *Criminal Justice and Immigration Act 2008*, 8 May 2008, sch. 11 para. 4, available at [www.legislation.gov.uk/ukpga/2008/4/contents](http://www.legislation.gov.uk/ukpga/2008/4/contents).

<sup>60</sup> HM Government Ministry of Justice, 'Response to the European Commission's Green Paper on the application of EU criminal justice legislation in the field of detention', available at [http://ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/uk\\_ministry\\_of\\_justice\\_response\\_en.pdf](http://ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/uk_ministry_of_justice_response_en.pdf).

<sup>61</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, ss. 3 (6ZAA) and 3AA, available at [www.legislation.gov.uk/ukpga/1976/63/contents](http://www.legislation.gov.uk/ukpga/1976/63/contents).

<sup>62</sup> HM Government (1976), *Bail Act 1976*, 15 November 1976, s. 3AA (1)-(5), available at [www.legislation.gov.uk/ukpga/1976/63/contents](http://www.legislation.gov.uk/ukpga/1976/63/contents).

<sup>63</sup> HM Government (2012), *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, 1 May 2012, s. 92, available at [www.legislation.gov.uk/ukpga/2012/10/contents](http://www.legislation.gov.uk/ukpga/2012/10/contents). See also further guidance in HM Government Department for Education (2014), 'Looked after children and youth justice: Application of the Care Planning, Placement and Case Review (England) Regulations 2010 to looked after children in contact with youth justice services', April 2014, p. 13-14, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300342/Guidance\\_revised\\_following\\_consultation.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300342/Guidance_revised_following_consultation.pdf).

<sup>64</sup> See Northern Ireland Law Commission (2012), *Bail in criminal proceedings*, September 2012, available at [www.nilawcommission.gov.uk/32432\\_-\\_bail\\_report\\_nilc14\\_2012\\_.pdf](http://www.nilawcommission.gov.uk/32432_-_bail_report_nilc14_2012_.pdf). After this report, a public consultation was held on the matter: see Northern Ireland Department of Justice (2013), 'Consultation on Northern Ireland Law Commission Report on Bail in Criminal Proceedings', 1 July 2013, available at [www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-ni-law-commission-report-on-bail-in-criminal-proceedings-july-2013.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-ni-law-commission-report-on-bail-in-criminal-proceedings-july-2013.pdf). See also Northern Ireland Department of Justice (2013), 'A Guide to Bail Applications', April 2013, available at [www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/p\\_uil\\_Bail-guide/A-guide-to-Bail-applications.pdf](http://www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/p_uil_Bail-guide/A-guide-to-Bail-applications.pdf).

harm to the accused (from himself/herself or from others) against which he/she would be inadequately protected; and 5) risk to the preservation of public order.<sup>65</sup>

Conditions of bail can include, for example, residing at a specific address, imposition of a curfew or handing over his/her passport.<sup>66</sup> EM as a condition of bail is made available in the Criminal Justice (Northern Ireland) Order 2008.<sup>67</sup>

- **Scotland**

In Scotland, the Criminal Procedure (Scotland) Act 1995 includes the possibility of bail.<sup>68</sup> The grounds on which bail can be refused are set out in Section 23C and are non-exhaustive.<sup>69</sup> They include the risk that the accused will not appear at the trial and the risk that he/she will commit further offences. When the accused is charged with a violent, sexual offence or drug trafficking offence or he/she has been previously convicted of one of these, bail can only be granted in exceptional circumstances.<sup>70</sup>

There are several standard conditions attached to bail,<sup>71</sup> such as, for example, the condition that he/she does not commit an offence while on bail. The court can impose additional conditions as well.<sup>72</sup> EM as a condition of bail currently has no legal basis in law and is not being used.<sup>73</sup>

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<sup>65</sup> Northern Ireland Department of Justice (2013), 'A Guide to Bail Applications', April 2013, p. 6, available at [www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/p\\_uil\\_Bail-guide/A-guide-to-Bail-applications.pdf](http://www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/p_uil_Bail-guide/A-guide-to-Bail-applications.pdf).

<sup>66</sup> Northern Ireland Department of Justice (2013), 'A Guide to Bail Applications', April 2013, pp. 7-9, available at [www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/p\\_uil\\_Bail-guide/A-guide-to-Bail-applications.pdf](http://www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/p_uil_Bail-guide/A-guide-to-Bail-applications.pdf).

<sup>67</sup> HM Government (2008), *Criminal Justice (Northern Ireland) Order 2008*, 7 May 2008, s. 40, available at [www.legislation.gov.uk/nisi/2008/1216/contents](http://www.legislation.gov.uk/nisi/2008/1216/contents). See also Northern Ireland Government (2014), 'Sentencing and appeals – Electronic Tagging', available at [www.nidirect.gov.uk/sentencing-and-appeals](http://www.nidirect.gov.uk/sentencing-and-appeals).

<sup>68</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, ss. 22A-33, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>69</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 23C, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>70</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 23D, available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>71</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 24 (5) (a)-(e), available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>72</sup> HM Government (1995), *Criminal Procedure (Scotland) Act 1995*, 8 November 1995, s. 24 (a) (b), available at [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents).

<sup>73</sup> Scottish Government (2013), 'Development of Electronic Monitoring in Scotland: A Consultation on the Future Direction of the Electronic Monitoring Service', September 2013, pp. 33-34, available at <http://www.gov.scot/Resource/0043/00434434.pdf>. A pilot was run in 2005 and, partly because of the findings of the pilot, existing legislation on electronic monitoring was repealed.

**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)?**

No, there are no specific legislative or policy developments regarding alternatives to prison of particular suspects/sentenced persons. As there has been a general election on the 7th of May 2015, new policies have not yet been established.<sup>74</sup>

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<sup>74</sup> For children and young persons, policy measures taken in the 2010-2015 period can be found in HM Government (2015), “2010 to 2015 government policy: young offenders”, 7 May 2015, available at [www.gov.uk/government/publications/2010-to-2015-government-policy-young-offenders/2010-to-2015-government-policy-young-offenders](http://www.gov.uk/government/publications/2010-to-2015-government-policy-young-offenders/2010-to-2015-government-policy-young-offenders). They do not specifically include alternatives to prison.

## Section B: Transfer of suspects/sentenced persons<sup>75</sup>

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)   |
|---|--|--|---|
| <b>Q1. AVAILABILITY OF INFORMATION</b>  |  |  |   |
| Q1.1. Is information publicly available in 'issuing states' concerning the following:? If yes, please specify.  |  |  |   |
| <ul style="list-style-type: none"> <li>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)?</li> </ul> | Foreign national prisoners (FNPs) are identified as within the scope of FD 909 action. A Deportation Order is sought and once obtained the FNP will be sent a letter from the National Offender Management System (NOMS) <sup>76</sup> stating that the UK is seeking their transfer under FD 909. | Not in law, the UK opted out of various FDs, including FD 947. <sup>79</sup> | The UK opted out of various FDs, including FD 829.<br><br>In December 2014, the UK notified the European Commission of its wish to participate in certain acts of the European Union, including FD 829, which was accepted by the Commission. <sup>80</sup> |

<sup>75</sup> The information provided in Section B has been obtained from the **National Offender Management System (NOMS)** through a request for information. The filled out template was returned by NOMS.

<sup>76</sup> For more information, see: National Offender Management Service, [www.noms Careers.com](http://www.noms Careers.com). See also: National Offender Management Service (2014), 'How the National Offender Management Service works', June 2014, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/337028/how\\_noms\\_works\\_web\\_v6.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337028/how_noms_works_web_v6.pdf).

<sup>79</sup> The UK has no formal legal mechanisms in place in either instance. The UK does not use any multilateral treaty in this regard. They are not party to any bilateral treaties in this regard. In the past, there were some ad hoc and informal probation transfers between the UK and Ireland but this is now actively discouraged by the government as there was no legal enforcement mechanism and problems had to be resolved using extradition processes.

<sup>80</sup> European Commission (2014), Commission Decision 2014/858/EU of 1 December 2014 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis, OJ 2014 L 345.

|   |   |  |   |
|---|---|--|---|
|   | <p>FNPs will receive information from NOMS provided by the executing state. NOMS does not have a databank of information from other states as such.</p> <p>‘Tracks’,<sup>77</sup> a resettlement resource for FNPs, is a web-based resettlement toolkit for the use of FNPs as well as prison and probation staff working with them. It includes information on resettlement options for FNPs including Prisoner Transfer Arrangements. ‘Tracks’ is commissioned by NOMS and designed and maintained by a migrant advice NGO, Praxis,<sup>78</sup> based in London.</p> |  | <p>The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 and the Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014 implemented the FD in the UK.<sup>81</sup></p> <p>According to the Regulations, the issuing state should provide the executing state with the decision on supervision measures or a certified copy of it and the certificate required by FD 829.<sup>82</sup></p> |
| <ul style="list-style-type: none"> <li>• How is the information made publically available (tools, or networks used)?</li> </ul> | <p>The government has made numerous statements saying that it will use FD 909 for the transfer of FNPs.</p>   |  | /   |

<sup>77</sup> For more information, see: Praxis NOMS Electronic Toolkit, ‘Tracks’, available at [www.tracks.uk.net](http://www.tracks.uk.net).

<sup>78</sup> For more information, see: Praxis Community Projects, [www.praxis.org.uk](http://www.praxis.org.uk).

<sup>81</sup> HM Government (2014), *Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014*, 2 December 2014, available at [www.legislation.gov.uk/uksi/2014/3141/contents](http://www.legislation.gov.uk/uksi/2014/3141/contents) and HM Government (2014), *Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014*, 1 December 2014, available at [www.legislation.gov.uk/ssi/2014/337/contents](http://www.legislation.gov.uk/ssi/2014/337/contents).

<sup>82</sup> HM Government (2014), *Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014*, 2 December 2014, regs. 77 and 96, available at [www.legislation.gov.uk/uksi/2014/3141/contents](http://www.legislation.gov.uk/uksi/2014/3141/contents) and HM Government (2014), *Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014*, 1 December 2014, schedule 1 s. 2 and schedule 2 s. 3, available at [www.legislation.gov.uk/ssi/2014/337/contents](http://www.legislation.gov.uk/ssi/2014/337/contents).

|   |   |  |  |
|---|---|--|--|
|   | <p>‘Tracks’,<sup>83</sup> a resettlement resource for FNPs, is a web-based resettlement toolkit for the use of FNPs as well as prison and probation staff working with them. It includes information on resettlement options for FNPs including Prisoner Transfer Arrangements. ‘Tracks’ is commissioned by NOMS and designed and maintained by a migrant advice NGO, Praxis,<sup>84</sup> based in London.</p> |  |  |
| <ul style="list-style-type: none"> <li>• In which languages is the information provided?</li> </ul> | <p>NOMS has a range of letters in different languages (25 approximately) for use at the stage when they receive a deportation order and fall to be considered for transfer.</p> <p>‘Tracks’ contains information on resettlement abroad options including prison transfer, in a number of languages other than English.</p>   |  | <p>According to the Regulations, the issuing state will translate the certificate into the official language or one of the official languages of the executing state (unless English is an official language of the executing state).<sup>85</sup></p> |

<sup>83</sup> For more information, see: Praxis NOMS Electronic Toolkit, ‘Tracks’, available at [www.tracks.uk.net](http://www.tracks.uk.net).

<sup>84</sup> For more information, see: Praxis Community Projects, [www.praxis.org.uk](http://www.praxis.org.uk).

<sup>85</sup> HM Government (2014), *Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014*, 2 December 2014, regs. 77 and 96, available at [www.legislation.gov.uk/uksi/2014/3141/contents](http://www.legislation.gov.uk/uksi/2014/3141/contents) and HM Government (2014), *Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014*, schedule 1 s. 2 and schedule 2 s. 3, available at [www.legislation.gov.uk/ssi/2014/337/contents](http://www.legislation.gov.uk/ssi/2014/337/contents).

|   |   |  |   |
|---|---|--|---|
| <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>None apart from the competent authority, which is NOMS, Equality Rights &amp; Decency Group, Foreign National Offenders Section.<sup>86</sup></p>  |  | / |
| <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>NOMS collects data on how long the transfer process under FD 909 takes. In this way gaps can be measured and the process can be made more efficient.</p> <p>The information that is collated is the time it takes for NOMS and the receiving States to reach certain process points.</p> |  | / |

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<sup>86</sup> For England and Wales: NOMS; for Northern Ireland: Northern Ireland Prison Service; and for Scotland: Scottish Prison Service.



| TOPIC  | FD 2008/909  | FD 2008/947 | FD 2009/829 (ESO) |
|--|--|-------------|-------------------|
| <b>Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON</b>  |  |             |                   |
| <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>Information on Prison Transfer Agreements (PTAs) is available in prisons and via Prison Service Instruction 52/2011.<sup>87</sup></p> <p>Prison staff have to inform FNPs on induction and subsequent through-care contact.<sup>88</sup> This is an oral procedure and part of the standard sentence planning process.<sup>89</sup></p> <p>Home Office Immigration Enforcement embedded staff also reiterate the message of PTAs including FD 909.</p> <p>Tracks',<sup>90</sup> a resettlement resource for FNPs, is a web-based resettlement toolkit for the use of FNPs as well as prison and probation staff working with them. It includes information on resettlement options for FNPs including Prisoner Transfer Arrangements. 'Tracks' is</p> |             | /                 |

<sup>87</sup> National Offender Management Service (2011), 'Prison Service Instruction 52/2011: Immigration, Repatriation And Removal Services', 4 November 2011, available at [www.justice.gov.uk/offenders/psis/prison-service-instructions-2011](http://www.justice.gov.uk/offenders/psis/prison-service-instructions-2011).

<sup>88</sup> National Offender Management Service (2011), 'Prison Service Instruction 52/2011: Immigration, Repatriation And Removal Services', 4 November 2011, p. 17-18, available at [www.justice.gov.uk/offenders/psis/prison-service-instructions-2011](http://www.justice.gov.uk/offenders/psis/prison-service-instructions-2011).

<sup>89</sup> This information was obtained from NOMS.

<sup>90</sup> For more information, see: Praxis NOMS Electronic Toolkit, 'Tracks', available at [www.tracks.uk.net](http://www.tracks.uk.net).

|   |  |  |   |
|---|--|--|---|
|   | commissioned by NOMS and designed and maintained by a migrant advice NGO, Praxis, <sup>91</sup> based in London.   |  |   |
| 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>Foreign national prisoners (FNPs) are identified as within the scope of FD 909 action. A Deportation Order is sought and once obtained the FNP will be sent a letter from the National Offender Management System (NOMS)<sup>92</sup> stating that the UK is seeking their transfer under FD 909.</p> <p>The post Deportation Order (DO) letter from NOMS will advise the FNP of the implications of transfer and it will enable the prisoner to provide their opinion on transfer via a standard form.</p> |  | / |
| Q2.3. Does the suspect/sentenced person have the right to revoke his/her consent to the transfer in the issuing state? If yes, please   | Under FD 909, the UK will seek transfer of a FNP without their consent. The DO provides the  |  | / |

<sup>91</sup> For more information, see: Praxis Community Projects, [www.praxis.org.uk](http://www.praxis.org.uk).

<sup>92</sup> For more information, see: National Offender Management Service, [www.noms Careers.com](http://www.noms Careers.com). See also: National Offender Management Service (2014), 'How the National Offender Management Service works', June 2014, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/337028/how\\_noms\\_works\\_web\\_v6.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337028/how_noms_works_web_v6.pdf).

|   |  |  |  |
|---|--|--|--|
| <p>briefly specify until which stage of the procedure this right exists.</p>  | <p>mechanism to ensure that an enforced transfer can be considered under FD 909.</p> <p>If transfer is taking place on a voluntary basis, i.e. with the consent of the prisoner, that consent can be withdrawn at any point prior to the issuing of an order for transfer under the Repatriation of Prisoners Act 1984.<sup>93</sup></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:?<br/>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> | <p>The FNP is advised that they will be considered for transfer and they are given a standard form to complete in which they can give their opinion on the transfer. This form will be sent to the executing State no matter what opinion the FNP provides.</p>  |  |  |
| <ul style="list-style-type: none"> <li>• When consent is not required)?</li> </ul>  | <p>All prisoners are provided with an opportunity to submit written representations. These are considered and replied to before a Certificate is issued to the executing state. A prisoner is able to contact a legal adviser if required. This is a matter for the individual concerned.</p>  |  |  |

<sup>93</sup> HM Government (1984), *Repatriation of Prisoners Act 1984*, 26 July 1984, available at [www.legislation.gov.uk/ukpga/1984/47/contents](http://www.legislation.gov.uk/ukpga/1984/47/contents).

|   |  |  |  |
|---|--|--|--|
| <ul style="list-style-type: none"> <li>When consent is required, Article 6 (3) of FD 2008/909/JHA).</li> </ul>  | <p>Where a prisoner is required to consent to transfer, that consent is given in writing.</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>There is no formal process in place for prisoners to notify the competent authority that he/she has changed his/her opinion. However, a prisoner is able to submit information to the competent authority at any time and this will be considered and where appropriate forwarded to the executing state.</p>                     |  |  |
| <p>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)</p>                                 | <p>The FNP can seek legal assistance through the normal mechanisms available to prisoners</p> <p>It is open to a prisoner to consult his or her legal adviser. However, access to a legal adviser is not provided by the state. Access to a legal adviser can be through a face-to-face interview at the prison or by telephone.</p> |  | <p>In the absence of further information from the requisite authorities or any application having been made it can be assumed that this would fall under the general rules and principles of criminal law.</p> |
| <p>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.</p>   | <p>Legal representatives will make their own arrangements for translations and interpretation.</p>   |  | <p>In the absence of further information from the requisite authorities or any application having been made it can be assumed that this would fall under the general rules and principles of criminal law.</p> |

|  |   |  |   |
|--|---|--|---|
| Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?  | If they fall into the relevant criteria they may receive legal aid. <sup>94</sup>   |  | In the absence of further information from the requisite authorities or any application having been made it can be assumed that this would fall under the general rules and principles of criminal law. |
| Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:                                    | Yes, if required  |  | /   |
| <ul style="list-style-type: none"> <li>• While consenting to the transfer?</li> </ul>  | Yes, if required  |  | /   |
| <ul style="list-style-type: none"> <li>• While requesting the transfer?</li> </ul>   | Yes, if required  |  | /   |
| Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information. | <p>They are done by correspondence mainly.</p> <p>Prison staff is on hand to assist FNPs as required. Prisons have access to translation services. These can be for face-to-face interpretation or telephone translation. It is for prison staff to determine when it is necessary or appropriate to use such facilities.</p> |  | /   |

<sup>94</sup> See HM Prison Service (2003), 'Prison Service Order 2600: Legal issues relating to prisoners', 27 October 2003, available at [www.justice.gov.uk/offenders/psos](http://www.justice.gov.uk/offenders/psos).

|   |  |  |   |
|---|--|--|---|
| <p>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.</p>  | <p>Initial NOMS letters following DO are clear about the implications for transfer. FNPs will receive an additional letter when the certificate is sent and when the transfer is agreed stating what the next steps will be.</p> <p>There are no specific checks on whether or not an individual understands the process. However, a prisoner can consult his legal adviser, specialist NGOs and prison staff.</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>The FNP will receive all relevant information provided by the executing state concerning the administration of the sentence in that state. The information is normally provided in his or her own language.</p>   |  | / |
| <p>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)</p>                   | <p>The FNP can seek to challenge the issuing of the certificate or the transfer process in general through a judicial review. A prisoner can seek assistance through his legal representative.</p>   |  | / |
| <p>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</p>   | <p>The prisoner does not have a right to a regular review of the decision to transfer. A final decision on transfer will only be made once the executing state has responded to the</p>  |  | / |

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| (e.g. how often he/she can exercise this right)  | certificate. If there has been any change in circumstances in the meantime, a prisoner can submit information to the competent authority at any time.   |  |   |
| 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>This will depend on the executing state's arrangements as sentence enforcement can be a judicial or executive process.</p> <p>It is not normal for legal counsel to be involved where the UK is the executing State. The UK operates an administrative process. There is no judicial involvement in the process. It remains open to a prisoner to engage counsel if he or she so wishes to make representations on their behalf.</p> |  | In the absence of further information from the requisite authorities or any application having been made it can be assumed that this would fall under the general rules and principles of criminal law. |
| 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.   | Yes, for example, based on less than six months left to serve (Article 9 (1) (h)).  |  | /   |
| 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) | No  |  | /   |

| TOPIC   | FD 2008/909  | FD 2008/947 | FD 2009/829 (ESO) |
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| <b>Q3. DECISION ON TRANSFER</b>   |  |             |                   |
| 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"> <li>The likely impact on the social rehabilitation of the suspect/sentenced person?</li> </ul>         | <p>Yes, the UK looks to transfer prisoners who are subject to deportation and therefore will not be allowed to remain in the UK. The UK believes that it would normally be in the best interest of the prisoner's social rehabilitation to serve his sentence in the country into which he or she will be released.</p>    |             | /                 |
| <ul style="list-style-type: none"> <li>Fundamental rights implications (such as the right to family life, right to education)?</li> </ul> | <p>While the UK will take into account fundamental rights such as right to family life and implication of prison conditions, access to education would not normally prevent transfer. Prisoners are transferred to Member States of the European Union. Access to education would be a matter for the executing State.</p> |             | /                 |
| <ul style="list-style-type: none"> <li>Others? Please specify.</li> </ul>   | <p>Initially, conditions in the proposed receiving state would be assessed if this was an issue raised by a prisoner. However, as the majority of prisoners now raise conditions as a ground to prevent transfer, conditions are now more routinely assessed. An example of a condition often raised is prison</p>         |             | /                 |



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|   | <p>overcrowding. Up until now these have never lead to a transfer being cancelled.<sup>95</sup></p> <p>Information is gathered from CPT reports and ECtHR case-law. Reference is also made to US State Department assessments. Reference is also had to perhaps more up-to-date reports from other sections of the national justice system – for example, references to conditions in extradition decisions.</p>                                      |  |   |
| <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 the issuing state? Please provide any document containing those criteria/guidelines and specify whether the following factors are considered:</p> | <p>It is the view of the UK that a prisoner who is to be deported and who will not be able to live in the UK following release should normally be transferred to his state of nationality where he can properly be prepared for release into the community in which he will live. It is not possible to prepare a prisoner for release and facilitate his social rehabilitation in a country in which the prisoner will not be allowed to remain.</p> |  | / |
| <ul style="list-style-type: none"> <li>Family and social ties (e.g. accommodation, employment or</li> </ul>   | <p>If a prisoner is to be deported then he will not be able to live or work in the UK following release. These</p>  |  | / |

<sup>95</sup> This information was obtained from NOMS.

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| <p>other economic ties, linguistic and cultural links)?</p>  | <p>options can only be addressed in the country to which he will be removed. Transfer enables the prisoner to prepare for release and to strengthen or re-establish links with the community in which he/she will live.</p>  |  |   |
| <ul style="list-style-type: none"> <li>• Criminal history and criminal ties?</li> </ul>  | <p>Criminality and criminal history will trigger consideration for deportation.</p>  |  | / |
| <ul style="list-style-type: none"> <li>• Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)?</li> </ul>   | <p>Yes. These are assessed on a case-by-case basis. For example, in case of illness of the prisoner, an assessment will be made if appropriate medication and care is available in the country he/she is being sent to. In case a prisoner's family member (wife/husband, child, etc.) is severely ill, this will be taken into account in the decision whether to transfer the prisoner.<sup>96</sup></p> |  | / |
| <ul style="list-style-type: none"> <li>• 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)</li> </ul> | <p>Detention conditions will factor into the decision but they will not necessarily override other considerations. Prison conditions</p>   |  | / |

<sup>96</sup> This information was obtained from NOMS.

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|   | will as a matter of course vary from state to state.  |  |   |
| • Others?   |   |  | / |
| Q3.3. Are the following persons/entities consulted in the evaluation of the likelihood of social rehabilitation by the issuing state:   |   |  |   |
| • Probation agencies or similar entities in the issuing state?  | No  |  | / |
| • The competent authorities in the executing state?   | On a case by case basis   |  | / |
| • The suspect/sentenced person?   | The sentenced person is able to give his opinion in writing about the possibility of transfer. The prisoner is able to put forward reasons why transfer would not enhance his social rehabilitation and these will be considered. |  | / |
| • The family of the suspect/sentenced persons, especially with regard to child offenders?   | No  |  | / |
| • Any other person/entity?  |   |  | / |
| 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? | No  |  | / |

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| <p>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.</p> | <p>No</p>  |  | <p>/</p> |
| <p>Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?</p>  | <p>This depends on the declaration in FD 909 on languages. If translation of the certificate into the official language of the executing state is required by the FD, every other supporting document that is requested will, if possible, be translated in this language as well (even if not required).<sup>97</sup></p> <p>However, pre-sentence reports are generally not available when forwarding the certificate.</p> |  | <p>/</p> |
| <p>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 whether or not to consent to the forwarding of the judgement and the certificate (where required)?</p>                           | <p>All cases are considered on their individual merits. The starting point is that where a person is to be deported from the UK, transfer is normally in the interest of sentenced person.</p>   |  |          |

<sup>97</sup> This information was obtained from NOMS.

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| Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:   | Yes                 |  | Yes, they are set out in Part 4 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. <sup>98</sup> |
| <ul style="list-style-type: none"> <li>National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state?</li> </ul> | Yes                 |  | /   |
| <ul style="list-style-type: none"> <li>Authorities in the issuing and executing state?</li> </ul>   | In line with FD 909 |  | /   |

| TOPIC   | FD 2008/909  | FD 2008/947 | FD 2009/829 (ESO) |
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| <b>Q4. VICTIMS<sup>99</sup></b>   |  |             |                   |
| 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"> <li>The decision to transfer</li> </ul>  | <p>Yes, this is part of standard practice, if the victims are identified and are in contact with the Victims Liaison Unit.<sup>100</sup></p> <p>Victims or their families do not have a statutory right to be involved in the transfer process. However, Ministers have decided that where victims or their families are in contact with the Victim Liaison Scheme then they will be informed through their Victim Liaison</p> |             | /                 |

<sup>98</sup> HM Government (2014), *Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014*, 2 December 2014, part. 4, available at [www.legislation.gov.uk/uksi/2014/3141/contents](http://www.legislation.gov.uk/uksi/2014/3141/contents)

<sup>99</sup> This information was obtained from NOMS.

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|   | Officer that a prisoner is being considered for transfer. <sup>101</sup>  |  |   |
| <ul style="list-style-type: none"> <li>The status of the transfer</li> </ul>  | Yes, this is part of standard practice, if the victims are identified and are in contact with the Victims Liaison Unit. <sup>102</sup>  |  | / |
| <ul style="list-style-type: none"> <li>Other? Please specify.</li> </ul>  | /   |  | / |
| Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:  | Yes, on a case by case basis. Information on victims resident in the executing State may be passed to authorities there.  |  | / |
| <ul style="list-style-type: none"> <li>Is the information provided upon request of the victim?</li> </ul>   | Yes   |  | / |
| <ul style="list-style-type: none"> <li>Who responsible for providing this information?</li> </ul>   | NOMS, Victims Liaison Unit  |  | / |
| <ul style="list-style-type: none"> <li>Is it a verbal or written communication?</li> </ul>  | Both. A Victim Liaison Officer may have an established relationship with a victim.  |  | / |
| 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) | The victims or their families can enter written representations in relation to transfer if they wish. These can be in any language and will be translated to English. These will be considered when determining the transfer. Victims do not have a veto over transfer. |  | / |

<sup>101</sup> This information was obtained from NOMS.

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|  | While victims do not have a veto over transfer, any representations will be considered carefully when determining whether or not to proceed with the transfer of an individual. It is possible, therefore, that a transfer may not go ahead if it is considered that the victims representations are compelling. <sup>103</sup> |  |   |
| 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.                             | No rights other than being informed and being able to state their objections which will be considered by the issuing state if relevant.   |  | / |
| 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)? | As required by the FD.  |  | / |
| 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)?                   | Not to our knowledge  |  | / |

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<sup>103</sup> This information was obtained from NOMS.