

**CRIMINAL JUSTICE (MUTUAL RECOGNITION
OF CUSTODIAL SENTENCES) BILL 2020**

GENERAL SCHEME

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An Act to give effect to Council Framework Decision (2008/909/JHA) of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union and to provide for related matters.

Be it enacted by the Oireachtas as follows:

PART I — PRELIMINARY AND GENERAL

Head 1. Short Title and Commencement

Provide that:

- (1) This Act may be cited as the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2020*.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Head 2. Interpretation

Provide that:

(1) In this Act -

“Act of 1965” means the Extradition Act 1965;

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

“Act of 2003” means the European Arrest Warrant Act 2003;

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

“appropriate Court” means—

- (a) Where an application is made under *Head 11* in relation to a forwarded judgment in respect of an offence which would, if dealt with under the law of the State, have been required to be tried by the Central Criminal Court, the High Court, and
- (b) In any other case, the Circuit Court.

“competent authority” means the authority in a Member State designated by that Member State as the competent authority for the purposes of the Framework Decision;

“executing State” means the state, the competent authority of which the judgment is to be, has been, or is proposed to be forwarded to;

“enforcement of a sentence” shall include, where relevant, the enforcement of the balance of the sentence that remains to be served.

“forwarding a judgment” means the forwarding of a judgment to the competent authority of the executing State for the purposes of its recognition and the enforcement of a sentence imposed therein by the executing State and shall include the forwarding of a Framework Decision Certificate, if any, unless specified otherwise.

“Framework Decision” means Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the

purpose of their enforcement in the European Union, as amended by the 2009 Framework Decision;

“Framework Decision Certificate” means the certificate set out in Annex 1 of the *Schedule*, and references to such a certificate shall include a certified copy thereof unless otherwise specified.

“issuing State” means the state in which a judgment has been issued;

“judgment” means a final decision, direction or order of a court in the State or in a Member State imposing a sentence on a natural person and, unless otherwise specified, includes a record in writing of that decision, direction or order or a certified copy thereof;

“lives” means the State in which the sentenced person is attached based on his or her habitual residence and on the existence of:

- (a) family ties;
- (b) social ties; or
- (c) professional ties

in that State.

“Member State” means —

- (a) a Member State of the European Union other than the State, and
- (b) in accordance with Council Decision 1999/439/EC, Council Decision 2006/697/EC, Council Decision 2008/149/JHA and Council Decision 2011/349/EU the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein.

“Member State of nationality” means the Member State of which the sentenced person is a national;

“Minister” means the Minister for Justice and Equality;

“prison” means a place of custody (other than a Garda Síochána station) administered by or on behalf of the Minister and without prejudice to the generality of such definition includes-

- (a) a place of detention provided under section 2 of the Prisons Act 1970,
and
- (b) a place specified under section 3 of the Prisons Act 1972;
- (c) a designated centre under section 3 of the Criminal Law (Insanity) Act 2006;
- (d) a children detention school designated under section 160(1) of the Children Act 2001.

“reasoned opinion” means a reasoned opinion presented by the competent authority of the executing State that the social rehabilitation and successful reintegration of the sentenced person into society would not be facilitated by enforcement of the sentence by the executing State;

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

“sentenced person” means a natural person on whom a sentence has been imposed;

“2009 Framework Decision” means Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

Head 3. Expenses

Provide that:

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

Head 4. Annual report

Provide that:

- (1) The Minister shall, as soon as may be, but not later than 4 months after the end of each year, make a report in writing to each House of the Oireachtas on the operation of this Act during that year.
- (2) A report made under *subhead (1)* shall include information in relation to each application or request made under this Act.
- (3) Notwithstanding *subhead (1)*, if, but for this subhead, the first report under that subhead would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be but not later than 4 months after the end of that year.
- (4) The Minister may in any year consolidate the report to be made under this Act with the report to be made under the *Transfer of Sentenced Persons Acts*.

Head 5. Competent authority

Provide that:

(1) (a) Subject to *paragraph (b)*, the Minister is the competent authority in the State for the purposes of this Act and the Framework Decision.

(b) The appropriate court is designated as the competent authority in the State for the purposes of the recognition of a forwarded judgment under *Head 38*.

(2) The Minister may designate in writing such persons as he or she considers appropriate to perform such functions of the Minister under this Act as are specified in the designation and different persons may be designated to perform different functions of the Minister under this Act.

(3) For so long as a designation under *subhead (2)* remains in force, a reference in this Act to the Minister shall, insofar as it relates to the performance of a function specified in the designation, be construed as a reference to the person designated to perform the function concerned.

(4) The Minister shall, by notice in writing, inform the General Secretariat of the Council of the European Union of the making of a designation under this Head and of the names of any person designated.

(5) The Minister may amend or revoke a designation under this Head (including a designation amended under this subhead).

Head 6. Application of Act

Provide that:

This Act applies in relation to sentences imposed on sentenced persons on or after 5 December 2008 subject to *Head 46*.

Head 7. Requirements with respect to communications

Provide that:

Where the Minister is required by a provision of this Act to forward a document or information to the competent authority of a Member State, executing State or issuing State, he or she shall forward the document or information directly to that competent authority by any means capable of producing a record in writing of the document or information under conditions allowing such competent authority to establish the authenticity of that document or information.

Head 8. Orders & Regulations

Provide that:

- (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Without prejudice to any provision of the Act, regulations under this Head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulation.
- (3) Every order and regulation under this act shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Head 9. Proxy notification and decision-making

Provide that:

(1) In this Part, where a sentenced person is, by reason of his or her age or physical or mental condition, incapable of:

- (a) receiving a notification,
- (b) making an application,
- (c) providing an opinion, or
- (d) giving or withdrawing consent;

a legal representative of that person may act on behalf of the sentenced person in that respect.

PART 2 – Ireland as the issuing State

Head 10. Interpretation

Provide that:

In this Part –

“application” means an application made under *Head 11(1)* for the forwarding of a judgment for the purposes of its recognition and enforcement by the executing State;

“notification parties” has the meaning attributed to it by *Head 12*;

“relevant judgment” in relation to a sentenced person, means the judgment that is the subject of an application under *Head 11* or actions taken pursuant to the granting or refusal of such an application;

Head 11. Application to Minister for forwarding of a judgment

Provide that:

- (1) Subject to *subheads (2) – (6)* a person or competent authority specified in *subhead (2)* may make an application to the Minister to forward a judgment to a Member State.
- (2) The following are specified for the purposes of *subhead (1)*:
 - (a) the sentenced person;
 - (b) the competent authority of the executing State; and
 - (c) the Director General of the Irish Prisons Service.
- (3) An application made to the Minister under *subhead (1)* shall be in writing.
- (4) An application under *subhead (1)* may only be made if the sentenced person is in the issuing State or the executing State.
- (5) An application under *subhead (1)* made by the sentenced person shall include, where that person's consent is required under *Head 15(1)*, a statement of such consent.
- (6) The Minister shall, on receipt of an application, notify the notification parties of that matter under *Head 12*.
- (7) The Minister may, under his or her own initiative, forward a judgment to a Member State subject to the same requirements as apply to an application made under *subhead (1)*.

Head 12. Notification

Provide that:

- (1) Where, in respect of an application or of actions taken pursuant to the granting or refusal of an application, the Minister is required to notify notification parties under this Head of any matter, he or she shall notify the parties in *subhead (2)*.
- (2) Subject to *subhead (3)*, the following shall be notification parties—
 - (a) The person, body or competent authority making the application under *Head 11*;
 - (b) If different to *paragraph (a)*, where the sentenced person is in the State, that person;
 - (c) If different from *paragraph (a)*, where the sentenced person is remanded in custody in the State, the Irish Prison Service;
 - (d) Such other person or body as the Minister may designate with respect to a specific application;
 - (e) Such other persons or bodies as the Minister may designate with respect to all applications or a class of applications.
- (3) Where an application has been made otherwise than by the competent authority of the executing State, the competent authority of the executing State shall be a notification party from:
 - (a) Subject to *paragraph (b)*, when consultation has taken place under *Head 14*;
 - (b) Where no consultation has taken place under *Head 14*, when an application is granted.
- (4) Where the Minister grants an application under *Head 11* he or she shall—
 - (a) Where the sentenced person is in the State, give a notice to that sentenced person in the form set out in *Annex 2 of the Schedule* in a language which that person can understand.

- (b) Where the sentenced person is in the executing State, give a notice to the competent authority of the executing State in the form set out in *Annex 2 of the Schedule* for onward transmission to the sentenced person in that state.
- (5) Notifications under this head shall be in writing.

Head 13. Opinion of sentenced person on an application

Provide that:

- (1) Subject to *subheads (2) to (4)*, where an application under *Head 11* is made in respect of a sentenced person who is in the State, the Minister shall provide the sentenced person an opportunity to give his or her opinion on that application.
- (2) Where the Minister is required to provide an opportunity to give an opinion under *subhead (1)*—
 - (a) The Minister shall provide the sentenced person with the opportunity to give an opinion orally or in writing, and the Minister shall arrange, where the opinion is given orally, for a written record to be made of it, and whether the opinion is given orally or in writing shall be at the choice of the sentenced person;
 - (b) The Minister shall provide an opportunity to give an opinion prior to consultation under *Head 14* with the executing State and prior to determination under *Head 18* of the application, and at least 21 days shall be allowed to the sentenced person to give such an opinion before such consultation or determination proceeds.
- (3) An opinion provided under this Head shall be provided to the competent authority of the executing State if consultation takes place under *Head 14*.
- (4) This Head shall not apply where the Minister is satisfied that he or she is obliged to refuse the application irrespective of the opinion of the sentenced person.

Head 14. Consultation with executing State

Provide that:

- (1) (a) Subject to *paragraph (b)* and *subheads (2) to (6)*, an application under *Head 11* shall not be granted where the consent of the competent authority of the executing State is required pursuant to *Head 16* unless the Minister has consulted that competent authority.

(b) Notwithstanding that consultation is not required under *paragraph (a)*, the Minister shall under such circumstances, in so far as it is reasonable and practicable, consult with that competent authority.
- (2) The matters consulted on under *subhead (1)* shall include whether the social rehabilitation of the sentenced person would be facilitated by the enforcement of the sentence by the executing State and may include such other matters as the Minister may consider relevant.
- (3) Where in the course of consultation under *subhead (1)* or otherwise, the executing State presents a reasoned opinion that the social rehabilitation of the sentenced person would not be facilitated by the enforcement of the sentence by the executing State, such a reasoned opinion shall be considered by the Minister in determining the application.
- (4) For the avoidance of doubt, the requirement to consult under *subhead (1)* shall be satisfied where a reasonable opportunity has been provided to the competent authority of the executing State to provide observations, notwithstanding that no such observations have been provided.
- (5) This Head shall not apply where the Minister is satisfied that he or she is obliged to refuse the request regardless of the views or consent of the executing State.

Head 15. Consent of sentenced person

Provide that:

(1) Subject to *subheads (2) and (3)*, an application under *Head 11* shall not be granted and the execution of the relevant sentence shall not commence unless the sentenced person consents to the forwarding of the judgment to the executing State and the enforcement of the sentence imposed therein in the executing State.

(2) The consent of the sentenced person referred to in *subhead (1)* is not required where the executing State is:

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

(b) The Member State to which the sentenced person will be removed pursuant to a judicial or administrative decision or any other measure taken consequential to the judgment;

(c) The Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the State, or following his or her conviction in the State for the offence in respect of which the sentence was imposed by the relevant judgment.

(3) Consent given under this Head shall be given in writing.

(4) (a) Subject to *paragraph (b)*, for the purposes of *subheads (1) and (2)*, the sentenced person shall be deemed to be habitually resident in another Member State if he or she were so resident in that state for the 12 months immediately before the giving of the relevant judgment.

(b) A period in which the sentenced person was remanded in custody or on bail, or serving a sentence of imprisonment or detention shall be disregarded for the purposes of *paragraph (a)*.

Head 16. Consent of executing State

Provide that:

- (1) Subject to *subhead (2)*, an application under *Head 11* shall not be granted without the consent of the competent authority of the executing State to the forwarding of the judgment to the executing State.
- (2) The consent of the competent authority of the executing State referred to in *subhead (1)* is not required where the executing State is:
 - (i) The Member State of nationality in which the sentenced person lives;
 - (ii) The Member State of nationality to which the sentenced person will be removed pursuant to a judicial or administrative decision or any other measure taken consequential to the judgment;
- (3) Consent given under this subhead shall be given in writing.
- (4)
 - (a) Subject to *paragraph (b)*, for the purposes of *subheads (1)* and *(2)*, the sentenced person shall be deemed to be habitually resident in another Member State if he or she were so resident in that state for the 12 months immediately before the giving of the relevant judgment.
 - (b) A period in which the sentenced person was remanded in custody or on bail, or serving a sentence of imprisonment or detention shall be disregarded for the purposes of *paragraph (a)*.

Head 17. Withdrawal of consent by the sentenced person

Provide that:

(1) Consent given by a sentenced person under *Head 15* may be withdrawn by the person who gave that consent in writing at any time before the enforcement of the sentence by the executing State commences under this Part.

(2) Where a sentenced person indicates to the Minister otherwise than in writing that they wish to withdraw their consent a reasonable opportunity shall be given to provide a withdrawal of consent in writing prior to the commencement of the enforcement of the sentence in the executing State.

Head 18. Decision on an application under *Head 11*

Provide that:

(1) Subject to *subheads (2) to (4)*, the Minister may forward at his or her discretion grant an application under *Head 11* where the Minister is satisfied that all of the following apply—

(a) The sentenced person is in the State or the executing State;

(b) The social rehabilitation of the sentenced person would be facilitated by the enforcement of the relevant sentence by the executing State taking into account:

(i) family ties;

(ii) linguistic ties;

(iii) cultural ties;

(iv) social or economic ties; or

(v) such other ties as the Minister deems appropriate;

(c) Where an opportunity to give an opinion is required to be provided to the sentenced person under *Head 13*, such an opportunity has been given;

(d) Where consultation with the competent authority of the executing State is required under *Head 14*, such consultation has taken place;

(e) Where the consent of the sentenced person is required under *Head 15*, such consent has been obtained and has not been withdrawn;

(f) Where the consent of the competent authority of the executing State is required under *Head 16*, such consent has been obtained;

(g) The sentenced person is not subject to proceedings that have been brought, but have not concluded for the arrest or extradition under the *Act of 2003* or the *Act of 1965*;

(h) The judgment in respect of the application is not currently forwarded to and pending recognition or enforcement in any Member State.

(i) One of the following has occurred—

(i) The ordinary time for bringing an appeal against the judgment has expired without any such appeal having been made;

(ii) Such appeal has been withdrawn or abandoned;

(iii) On any such appeal, the judgment has been upheld.

(2) In considering whether to grant an application, the Minister shall have regard to, where provided—

(a) The opinion of the sentenced person;

(b) The opinion of the competent authority of the executing State, including a reasoned opinion provided by the executing State in the course of consultations under *Head 14* or otherwise.

(3) In considering whether to forward a judgment under *subhead (1)*, the Minister, may, at his or her discretion, invite or otherwise take into account—

(a) Submissions by the competent authority of the executing State or the sentenced person;

(b) Submissions by other parties.

(4) Having granted an application under *subhead (1)* the Minister shall, as soon as practicable thereafter—

(a) Prepare a Framework Decision Certificate and sign and certify the contents of the Certificate;

(b) Arrange for the Framework Decision Certificate to be translated into one of the official languages of the executing State unless the Minister knows that such a translation is not required by the competent authority of the executing State;

- (c) Forward the judgment and the Framework Decision Certificate to the competent authority of the executing State;
 - (d) Notify the notification parties under *Head 12*.
- (5) The Minister shall only forward the judgment and the Framework Decision to one executing Member State at time.

Head 19. Request for provisional arrest where sentenced person in executing State

Provide that:

(1) Where the Minister grants an application under *Head 18* where the sentenced person is in the executing State he or she may either before or after forwarding the judgment to the competent authority of the executing State, request that competent authority to arrest, or otherwise detain, the sentenced person in that state pending a decision of that competent authority on whether to recognise the judgment.

(2) Any period of time spent by a sentenced person in custody or in detention consequent upon his or her arrest or detention in accordance with *subhead (1)* shall be deducted from the period of time to be served, or remaining to be served, under the sentence imposed on him or her by the relevant judgment.

Head 20. Communications with executing State after judgment is forwarded

Provide that:

(1) Where the Minister forwards a judgment under *Head 18* and is requested by the competent authority of the executing State to provide a translation of the relevant judgment, or essential parts thereof, into an official language of the executing State, the Minister shall provide such a translation.

(2) Where the competent authority of the executing State to which a judgment has been forwarded under *Head 18* provides a reasoned opinion to the Minister, the Minister shall consider such a reasoned opinion where –

- (a) there has been no consultation with that competent authority under *Head 14*, and
- (b) that opinion is received by the Minister from that competent authority without delay after a judgment has been forwarded to it;

And, may, at his or her discretion, consider such a reasoned opinion notwithstanding that the conditions in paragraphs (a) or (b) have not been met; and having considered such a reasoned opinion may withdraw the Framework Decision Certificate pursuant to *Head 22*.

(3) Where the competent authority of the executing State to which a judgment has been forwarded under *Head 17* notifies the Minister that it believes that one or more circumstances specified in *subhead (4)* arise, and requests necessary additional information, the Minister shall endeavour to provide such information without delay.

(4) The circumstances specified for the purposes of *subhead (3)* are:

- (a) The Framework Decision Certificate is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;
- (b) The consent of the competent authority of the executing State is required for the forwarding of the judgment under *Head 16* and such consent was not obtained;

- (c) The consent of the sentenced person is required for the forwarding of the judgment and the enforcement of the sentence by the executing State under *Head 15* and such consent has not been obtained or has been withdrawn;
- (d) Enforcement of the sentence would be contrary to the principle of *ne bis in idem*;
- (e) Any psychiatric, healthcare or other measure involving deprivation of liberty forms part of the sentence imposed by the relevant judgment to which the request relates and the measure cannot be executed by the executing State in accordance with its legal or healthcare system;
- (f) the relevant judgment relates to criminal offences which, under the law of the executing State, are regarded as having been committed wholly or for a major or essential part in the territory of that state or in a place equivalent to its territory.

Head 21. Partial recognition and enforcement of sentence

Provide that:

(1) Subject to *subhead (2)*, where the competent authority of the executing State to which a judgment has been forwarded informs the Minister that it may, in respect of a judgment forwarded under *Head 20*—

- (a) partially recognise the judgment, and
- (b) partially enforce the sentence imposed therein;

the Minister may agree the terms of such partial recognition and partial enforcement with that competent authority.

(2) The Minister shall not agree to a partial recognition of a judgment and to a partial enforcement of a sentence imposed therein in accordance with *subhead (1)*, where such partial recognition and partial enforcement would aggravate the duration of the sentence imposed by that judgment.

(3) The Minister shall, on agreeing terms under *subhead (1)* or withdrawing the Framework Decision Certificate, notify the notification parties under *Head 12*.

Head 22. Withdrawal of Framework Decision Certificate

Provide that:

- (1) Subject to *subhead (4)*, the Minister may withdraw a Framework Decision Certificate provided to the executing State pursuant to the forwarding of a judgment under *Head 18* where he or she considers it to be in the public interest or in the interests of justice to do so provided that enforcement of the sentence under the judgment has not commenced.
- (2) Without prejudice to the generality of *subhead (1)*, a Framework Decision Certificate may be withdrawn where one or more of the following has occurred and the Minister considers it in the public interest or in the interests of justice for the Certificate to be withdrawn—
 - (a) The Minister has been informed by the competent authority of the executing State of the applicable provisions in that state in relation to possible early or conditional release;
 - (b) The Minister has considered a reasoned opinion provided by the competent authority under *Head 18(2)*;
 - (c) The Minister has been informed of the adaption of a sentence under *Head 18(2)*.
- (3) The Minister shall withdraw a Framework Decision Certificate where—
 - (a) he or she cannot reach agreement with the competent authority of the executing State in accordance with *Head 21*,
 - (b) the consent of the sentenced person is required under *Head 15* and is withdrawn in accordance with *Head 17*, or
 - (c) the request relates to an application in respect of a sentenced person in the executing State and the sentenced person cannot be located in the executing State.
- (4) The Minister may withdraw a Framework Decision Certificate under this Head at any time before the enforcement of the sentence by the executing State commences, and shall not

withdraw the Certificate after the commencement of the enforcement of the sentence by the executing State.

(5) Where the Minister withdraws a Framework Decision Certificate under this head he shall do so by notice in writing to the competent authority of the executing State and shall set out the reasons for the decision to withdraw the certificate and shall further notify the other notification parties under *Head 12*.

(6) Where the Minister has withdrawn a Framework Decision Certificate under this Head—

(a) The enforcement of the sentence by the executing State shall not commence;

(b) Where a sentenced person to whom a judgment forwarded under *Head 18* relates is in the State, he or she shall not be transferred to the executing State.

(c) Where a sentenced person is in the executing State by reason of having been transferred to that state under *Head 25*, the Minister shall arrange for him or her to be returned to the State as soon as is practicable.

Head 23. Actions on receipt of decision on recognition

Provide that:

- (1) The Minister shall, upon receipt of the decision of the competent authority of the executing State to recognise a judgment forwarded under *Head 18* and to enforce the sentence imposed therein, notify the notification parties under *Head 12*.

- (2) Where the decision of the competent authority referred to in *subhead (1)* is to refuse to recognise the judgment, any reasons given for that refusal shall be provided to the notification parties under *Head 12*.

- (3) Where the decision of the competent authority referred to in *subhead (1)* is to recognise the judgment and to enforce the sentence imposed therein subject to the adaption of the sentence—
 - (a) The nature of, and reasons given by that competent authority for, the adaption shall be provided to the notification parties under *Head 12*;

 - (b) The Minister shall without delay communicate to the executing State whether he or she agrees to the adaption;

 - (c) If the Minister does not agree to the adaption, he or she shall withdraw the Framework Decision Certificate.

Head 24. Issue of warrant by Minister for transfer of sentenced person out of State

Provide that:

- (1) Subject to *subheads (2) – (9)*, where the competent authority of an executing State notifies the Minister of its decision to recognise a judgment forwarded to it under *Head 18* and enforce the sentence imposed therein, the Minister may, where the sentenced person is in the State, issue a warrant for the transfer of a sentenced person out of the State to that state in accordance with this head.
- (2) A warrant issued under *subhead (1)* shall authorise -
 - (a) the taking of the sentenced person to a place in any part of the State and his or her delivery at a place of departure from the State into the custody of a person authorised by the competent authority of the executing State to receive the person for conveyance to that state,
 - (b) the keeping of the person in custody until the delivery referred to in *paragraph (a)* is effected, and
 - (c) the removal of the sentenced person, by the person to whom he or she is so delivered, from the State.
- (3) Where a warrant has been issued in respect of a sentenced person under this Head, the person shall be deemed to be in legal custody at any time when he or she is being taken under the warrant to or from any place or being kept in custody under the warrant and, if the person escapes or is unlawfully at large, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody.
- (4) The Minister may designate any person as a person who is, for the time being, authorised to take the sentenced person concerned to, or from, any place under the warrant or to keep the person in custody under the warrant.
- (5) A person authorised pursuant to *subhead (4)* to take the sentenced person to or from any place or to keep the person in custody shall, while so taking or keeping the sentenced person, have all the powers, authority, protection and privileges of a member of the Garda Síochána.

(6) Subject to *subhead (8)*, the order by virtue of which a sentenced person is required to be detained at the time a warrant is issued in respect of him or her under this head shall continue to have effect after his or her removal from the State so as to apply to him or her if he or she is again in the State at any time when under that order he or she is to be or may be detained.

(7) The Minister may, at any time after the removal of a sentenced person from the State where he or she considers it appropriate to give effect to this Act, direct that the order referred to in *subhead (6)* be varied or cease to have effect.

(8) In this Head a reference to an order by virtue of which a sentenced person is required to be detained at the time a warrant is issued in respect of him or her under this head includes a reference to an order by virtue of which he or she is required to be detained after the order by virtue of which he or she is required to be detained at that time ceases to have effect.

(9) If at any time before a sentenced person is transferred to an executing State under *Head 25* it appears to the Minister appropriate, in order that effect may be given to this Act, that a warrant issued under this Head in respect of the person should be revoked or varied, the Minister may revoke or vary the warrant.

Head 25. Transfer of sentenced person to executing State

Provide that:

(1) Subject to *subhead (2)*, the transfer of a sentenced person to an executing State in accordance with a warrant issued under *Head 24* shall take place not later than 30 days after the decision of the competent authority of the executing State to recognise the judgment and enforce the sentence imposed therein has been notified to the Minister.

(2) Where, due to unforeseen circumstances, it is not practicable for the transfer to take place within the time specified in *subhead (1)*, the Minister and the competent authority of the executing State shall endeavour to agree a different date on which the transfer shall take place which date shall be as soon as possible after the latest date on which the transfer should have occurred in accordance with *subhead (1)*.

(3) The transfer of a sentenced person in accordance with this head shall take place not later than 10 days after the date agreed under *subhead (2)*.

Head 26. Minister to notify executing State of cessation of enforceability of sentence

Provide that:

(1) The Minister shall, without delay, notify the competent authority of an executing State in which a sentenced person is detained in accordance with *Head 19* or pursuant to judgment forwarded under *Head 18* of any decision or measure as a result of which the sentence imposed on the sentenced person by the relevant judgment concerned ceases to be enforceable within the State.

(2) A notification referred to in *subhead (1)* shall specify the date on which the sentenced person is entitled to be released and request the release of the person from the place at which he or she is being detained or serving the sentence, as the case may be, in accordance with that date.

Head 27. Commencement of enforcement of sentence

Provide that:

- (1) On the commencement of enforcement of a sentence by an executing State under this Part, the competence to enforce the sentence shall transfer to the executing State and enforcement of that sentence shall no longer be governed by the law of the State.
- (2) Where the sentenced person is in the State the enforcement of a sentence in the executing State shall commence when that person is given into the custody of the executing State pursuant to *Head 25*.
- (3) Where person is already in custody in the executing State at the time of the recognition of the judgment, enforcement of a sentence shall commence—
 - (a) Where there is no adaption of the sentence by the executing State, on the date of recognition of the judgment;
 - (b) Where there is an adaption of the sentence by the executing State, on acceptance of the Minister of the terms of that adaption.
- (4) Where the sentenced person is in the executing State but is not in custody, enforcement of the sentence shall commence when that person is taken into custody.

Head 28. Competence to enforce sentence to revert to State in certain circumstances

Provide that:

Where, after enforcement has commenced in respect of a judgment forwarded under *Head 18*, the Minister is informed that the sentenced person has escaped from custody and has not been retaken, the competence to enforce the sentence shall revert to the State and the sentence shall be governed by the law of the State.

PART III – Ireland is executing State

Head 29. General Provisions & Interpretation

Provide that:

(1) A person may not appeal in the State against a judgment to which this Part applies.

(2) In this Part -

“revenue offence”: in relation to an issuing State, means an offence in connection with taxes, duties, customs or exchange control.

Head 30. Corresponding Offences

Provide that:

For the purposes of this Part—

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

Head 31. Redirection of requests

Provide that:

- (1) *Subhead (2)* applies where—
 - (a) A court;
 - (b) A Minister other than the Minister for Justice and Equality; or
 - (c) Any person performing, on behalf of the State, any function of government of discharging, on behalf of the State, public duties in relation to public administration

receives a judgment, Framework Decision Certificate or translation thereof from the competent authority of the issuing State.

- (2) That court, Minister or person shall—
 - (a) Send that item to the Minister, and
 - (b) As soon as is practicable, inform the competent authority of the issuing State of that action.

Head 32. Request to forward

Provide that:

- (1) Subject to *subhead (3)*, the Minister may on his or her own initiative request the competent authority of an issuing State to forward a judgment to the Minister in respect of a sentenced person.
- (2) Subject to *subhead (3)*, a sentenced person in the State or in an issuing State may apply to the Minister to request the competent authority of the issuing State to forward a judgment to the State in respect of that person and the Minister may, at his or her discretion, grant such an application and make such a request accordingly.
- (3) The Minister shall not make a request under *subhead (1)* or grant an application under *subhead (2)* unless he or she is satisfied that—
 - (a) The enforcement of the sentence in the State would facilitate the social rehabilitation and successful re-integration into society of that person; and
 - (b)
 - (i) It is not immediately clear that were the judgment to be forwarded, grounds for non-recognition under *Head 36* apply; or
 - (ii) Where it is immediately clear that grounds for non-recognition under *Head 36* apply, exceptional circumstances exist that may, in the Minister's opinion, justify recognition of the judgment notwithstanding those grounds.
 - (iii) The sentenced person is in the issuing State or the State.

Head 33. Consent to forward a judgment

Provide that:

- (1) The consent of the Minister shall be required for the forwarding of a judgment to the Minister unless—
 - (a) The sentenced person is a national of the State and lives in the State.
 - (b) The sentenced person is a national of the State and would be removed, deported or expelled to the State after serving the relevant sentence imposed on him or her by the judgment in accordance with the law of the issuing State.
- (2) The Minister may grant his or her consent for the forwarding of a judgment where the Minister is satisfied that—
 - (a) The sentenced person is in the State or the issuing State;
 - (b) The execution of the sentence in the State would facilitate the social rehabilitation and successful re-integration into society of that person;
 - (c) The sentenced person has close links to the State, having regard for the duration of the residence (if any) of the sentenced person in the State and any other links which exist between the sentenced person and the State;
 - (d)
 - (i) It is not immediately clear that grounds for non-recognition under *Head 36* apply; or
 - (ii) Where it is immediately clear that grounds for non-recognition under *Head 36* apply, exceptional circumstances may exist that would justify recognition of the judgment notwithstanding those grounds.
- (3) In deciding whether to grant consent, the Minister shall have regard to, where available—
 - (a) The opinion of the sentenced person;
 - (b) The opinion of the issuing State.
- (4) In deciding whether to grant consent under *subhead (1)*, the Minister, may, at his or her discretion, invite or otherwise take into account—
 - (a) Further submissions by the competent authority of the executing State or the sentenced person;
 - (b) Submissions by other parties.

Head 34. Consultation with Issuing State

Provide that:

(1) Where the Minister is consulted by an issuing State prior to the forwarding of a judgment, he or she shall promptly consider and, where appropriate, reply to relevant matters raised by the issuing State, and, where the Minister's consent is required for the forwarding of a judgment, promptly consider whether to grant such consent pursuant to *Head 33*.

(2) Where—

(a) The Minister is consulted by an issuing State prior to the forwarding of a judgment; or

(b) The judgment is forwarded without prior consultation;

And the Minister is of the opinion that the enforcement of the sentence in the State would not facilitate the social rehabilitation and successful re-integration into society of the sentenced person, he or she may present a reasoned opinion to the issuing State to that effect.

Head 35. Provisional Arrest

Provide that:

- (1) The Minister may, in respect of a judgment that has been or is to be forwarded to the State, prior to the determination of whether such a judgment will be recognised, apply to the High Court for the provisional arrest and detention of a sentenced person who is the subject of the judgment where –
 - (a) the sentenced person is in the State, and
 - (b) the Minister is requested to do so by the competent authority in the issuing State who made that application for the purpose of ensuring that that person remains in the State pending the making of a determination.
- (2) The High Court may, upon the sworn information of a member of the Garda Síochána not below the rank of inspector given with the consent of the Minister, issue a warrant for the arrest of a sentenced person if it is satisfied that—
 - (a) *paragraph (a) and (b) of subhead (1) apply, and*
 - (b) *the request referred to in subhead (1)(b) complies with subhead (3).*
- (3) A request referred to in *subhead (1)(b)* shall state—
 - (a) the name and date and place of birth of the sentenced person concerned,
 - (b) the address (if known) of the place in the State at which the person is for the time being residing,
 - (c) the nature of the offence, the circumstances in which the offence was committed and the time at which, and place where, the offence was committed,
 - (d) the nature, duration and date of commencement of the relevant sentence (or, where the sentenced person fled, or otherwise returned, to the State before he or she began serving the sentence, the date on which the sentence should have commenced), and
 - (e) where the person fled, or otherwise returned, to the State after having served part of the sentence but before he or she had completed serving the sentence, the period of the sentence that he or she served.
- (4) A warrant issued under *subhead (2)* may be executed by any member of the Garda Síochána in any part of the State and may be so executed notwithstanding that it is not in the possession of the member when he or she executes the warrant, and the warrant shall be shown to and a copy thereof given to the sentenced person arrested at the time of his or her

arrest or, if the warrant is not then in the possession of the member, not later than 24 hours after his or her arrest.

(5) A sentenced person arrested under a warrant issued under *subhead (2)* shall, as soon as may be after his or her arrest, be brought before the High Court and the High Court shall, unless the information listed under *subhead (3)* is produced to the court, remand the person in custody or on bail pending the production to it of that information, and for that purpose the High Court shall have the same powers of remand as it would have if the person were brought before it charged with an indictable offence.

(6) Where the information listed under *subhead (3)* is not produced in accordance with *subhead (5)* before the expiration of the period of 18 days from the date on which the person is arrested under a warrant issued under *subhead (2)*, the person concerned shall be released from custody forthwith.

(7) Where, in relation to a sentenced person who has been released in accordance with *subhead (6)*, an application is made by the competent authority in the sentencing state under *Head 38*, an application may be made under *Head 39* for a warrant authorising the arrest of that person where that person is in the State.

(8) Where a warrant authorising the arrest of a person is issued under this head, then in any subsequent proceedings it shall be presumed, unless the contrary is proved, that a request for the provisional arrest of that person has been made by the sentencing state concerned.

(9) Where a sentenced person is arrested in the State in accordance with a request made to the Minister under *subhead (1)*, any period of time spent by the sentenced person in custody following such arrest shall be deducted from the period of time to be served, or remaining to be served, under the relevant sentence to which the application relates.

Head 36. Grounds for non-recognition

Provide that:

- (1) The following are specified as mandatory grounds for non-recognition of a forwarded judgment—
 - (a) Where the Framework Decision Certificate is incomplete or does not, to a material extent, correspond to the judgment and has not been completed or corrected within the period of time specified by the Minister under *Head 37(2)*;
 - (b) Where the consent of the Minister for the forwarding of the judgment is required such consent has been not been obtained;
 - (c) Where the consent of the sentenced person for the forwarding of the judgment and the execution of the sentence imposed therein in the State is required such consent has not been obtained or has been withdrawn;
 - (d) Enforcement of the sentence in the State would be contrary to the principle of *ne bis in idem*;
 - (e) The sentenced person, by virtue of any enactment, is, under the law of the State, immune from prosecution for an offence consisting of an act or omission that constitutes, whether in whole or in part, the offence to which the judgment relates;
 - (f) Subject to *Heads 37(7)* and *38(8)*, the judgment relates to an offence under the law of the issuing State which does not correspond to an offence under the law of the State;
 - (g) The offence under the law of the issuing State to which the judgment relates corresponds to an offence under the law of the State in respect of which a person of the same age as the sentenced person could not be proceeded against by reason of his or her age at the time of the offence;
- (2) The following are specified as discretionary grounds for non-recognition of a forwarded judgment—
 - (a) The sentenced person is in neither the State nor the issuing State;
 - (b) There is less than six months remaining to be served under the sentence;
 - (c) The judgment was rendered *in absentia* unless the sentenced person was
 - (i) summoned in person and thereby informed of the date and place of the trial which resulted in the judgment and was informed that a judgment might be handed down in his or her absence,

(ii) was not summoned in person but by other means, actually received official information of the date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the trial, and was informed that a judgment might be handed down in his or her absence,

(iii) being aware of the trial, was represented at the trial by legal counsel appointed either by the sentenced person or by the sentencing state concerned, or

(iv) after being served with the judgment and being informed of his or her right to a retrial or an appeal in which he or she would have been able to participate and which allowed the merits of the case, including fresh evidence, to be re-examined, and which could have resulted in the original judgment being reversed, he or she-

(I) expressly stated that he or she did not contest the judgment, or

(II) did not request the retrial or appeal within the time limit for exercising that right.

(d) in exceptional circumstances having regard to the specific facts of the case, and in particular to whether a major or essential part of the offence was committed in the issuing State, the judgment relates to a criminal offence which under the law of the State is regarded as having been committed wholly or to a major or essential part within the State.

(e) the judgment provides for medical or therapeutic treatment which would be impossible or impracticable for the State to provide, notwithstanding any adaption of the sentence;

(f) the Minister has made an application to the issuing State competent authority under *Head 44(3)* and the issuing State's consent is not granted.

Head 37. Ministerial competencies in respect of forwarded judgment

Provide that:

- (1) This head applies where a judgment is forwarded to the Minister.
- (2) Where the Framework Decision Certificate is incomplete or does not, to a material extent, correspond to the judgment, the Minister shall, without delay, notify that competent authority accordingly and request that competent authority to complete or correct, or both, that Framework Decision Certificate within a period of time as the Minister shall reasonably specify.
- (3) Where the Minister believes that a translation of the relevant judgment, or essential parts thereof, is necessary for the proper consideration of the recognition of the judgment, the Minister may request such a translation from the issuing State or shall otherwise arrange for such a translation to be obtained.
- (4) Where the Minister believes that one or more grounds for non-recognition under
 - (a) *Head 36(1)(a), (b), (c) or (d)*, or
 - (b) *Head 36(2)(c), (d) or (e)* arises,

he or she shall consult the issuing State and where appropriate invite the issuing State to supply any necessary additional information prior to making an application under *Head 38*.

- (5) Where the Minister is of the view that grounds for non-recognition may apply in respect of the judgment in part or the sentence imposed therein in part or both—
 - (a) The Minister and the competent authority of the issuing State may agree the terms of a proposed partial recognition of the judgment and partial enforcement of the sentence imposed therein;
 - (b) Where such an agreement is reached, such part or parts of the judgment or sentence or both as agreed by the Minister and the competent authority to be out of scope shall thereafter not be considered by the Minister or the Court for recognition and enforcement;
 - (c) Such a partial recognition shall not be agreed by the Minister where the effect would be to aggravate the sentence.
- (6) Where the Minister is requested by the issuing State to provide information on the applicable provisions for possible early or conditional release, the Minister shall provide that information as soon as practicable.
- (7) The Minister shall not refuse to recognise a forwarded judgment on the ground that, in relation to a revenue offence—

- (a) no tax or duty of the kind to which the offence relates is imposed in the State, or
- (b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing State differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.

Head 38. Court competencies in respect of forwarded judgment

Provide that:

- (1) Where a judgment is forwarded to the Minister, and where necessary, any matters arising under *Head 37* have been addressed, the Minister shall, as soon as practicable thereafter, make an application to the Court for the recognition of the judgment or the refusal to recognition the judgment.
- (2) In determining an application under *subhead (1)*, the Court shall recognise a judgment unless any of the grounds specified in *Head 36* apply.
- (3) The Court may recognise a judgment notwithstanding that one or more grounds specified in *Head 36(2)* arises provided—
 - (a) The Minister consents to such recognition;
 - (b) Such recognition would not aggravate the sentence imposed on the sentenced person;
 - (c) The Court believes it in the interests of justice to do so;
- (4) The Court shall, if it is of the opinion that the sentence is by its nature incompatible with the law of the State, adapt the sentence, so far as is practicable, to that of a sentence prescribed by the law of the State for an offence which corresponds to the offence for which the sentence was imposed.
- (5) The Court shall, if it is of the opinion that the duration of the sentence exceeds the maximum penalty provided for an offence which corresponds to the offence for which the sentence was imposed, adapt the duration of the sentence to such a maximum penalty.
- (6) An adaption under *subheads (4)* or *(5)* shall—
 - (a) correspond as closely as possible to the sentence imposed in the issuing State; and
 - (b) not aggravate the sentence in terms of its nature or duration.
- (7) Where the judgment relates to criminal offences which under the law of the State are regarded as having been committed wholly or for a major or essential part within its territory the Court shall not recognise the judgment without the consent of the Minister.

- (8) The Court shall not refuse to endorse a judgment on the ground that, in relation to a revenue offence—
- (a) no tax or duty of the kind to which the offence relates is imposed in the State, or
 - (b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing State differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.
- (9) Where the appropriate court for the purposes of an application under *subhead (1)* is the Circuit Court, the application shall be made to the judge of the Circuit designated for that purpose by the President of the Circuit Court.

Head 39. Warrant

Provide that:

- (1) Where the Court determines an application under *Head 38* by recognising the judgment, the Court shall issue a warrant authorising—
 - (a) The enforcement by the State of the sentence imposed under the judgment, less the full period of time that the sentenced person has already served in connection with the sentence, subject to such adaptation as may have been made under that Head;
 - (b) The taking of the person to, and his or her detention in custody at, such place or places in the State as may be specified by the Court;
 - (c) Where the sentenced person is not in the State, the bringing of the sentenced person into the State from the issuing State;
- (2) The Court may specify, in a warrant under *subhead (1)*, any place or places to which the court would have jurisdiction to commit the sentenced person concerned if the sentence in respect of which the person is being detained by the sentencing state was imposed by the Court at the time of the issue of the warrant.
- (3) The sentenced person shall be deemed to be in legal custody at any time when he or she is being taken under a warrant under *subhead (1)* to or from any place or being kept in custody under the warrant and, if the person escapes, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody;
- (4) In respect of a warrant under *subhead (1)*, the Minister may designate any person as a person who is for the time being authorised to take the sentenced person to or from any place under the warrant or to keep the person in custody under the warrant;
- (5) A person authorised pursuant to *subhead (4)* to take the sentenced person to or from any place or to keep him or her in custody shall, while so taking or keeping the sentenced person, have all the powers, authority, protection and privileges of a member of the Garda Síochána.
- (6) A warrant under *subhead (1)* shall be issued conditional on the continuing in force of the Framework Decision Certificate.
- (7) Where a Framework Decision Certificate is withdrawn prior to the commencement of the enforcement of the sentence by the State in respect of a person who is in the State, the warrant issued under this part shall be varied to provide for that person to be returned to the issuing State.

Head 40. Provisions with respect to suspended sentences and conditional release

Provide that:

(1) Where the Court recognises a judgment where the sentence imposed therein after any adaption thereto is in part a suspended sentence, the warrant issued shall specify—

that the suspended sentence corresponds to a suspended sentence under section 99 of the Act of 2006

(2) Where the Court recognises a judgment where the sentence imposed therein after any adaption thereto provides for conditional release the warrant shall specify—

(a) that the conditional release corresponds to a direction given by the Minister under section 2 of the Act of 1960, and

(b) the place to which the sentenced person shall be taken if he or she is arrested under section 7 of the Act of 1960.

(3) The Minister shall inform the competent authority of the issuing State of the beginning and end of any period of conditional release.

Head 41. Enforcement to commence

Provide that:

- (1) Where a sentenced person is in the issuing State, the enforcement of a sentence in respect of a sentenced person shall commence at the point that person is given by the issuing State into the custody of persons authorised by a warrant under *Head 39*.
- (2) Subject to *subhead (3)*, where a sentenced person is in the State, the enforcement of the sentence shall commence at a date specified in the warrant issued by the Court under *Head 39*.
- (3) Where the Court adapts a sentence under *Head 38*, the Court shall provide the executing State with an opportunity to consider the adaption and whether to withdraw the Framework Decision Certificate prior to the commencement of the enforcement of the sentence.
- (4) Where the enforcement of the sentence is not commenced following the grant of a pardon or amnesty by the State or the issuing State the Minister shall inform the issuing State competent authority without delay.
- (5) Following the commencement of the enforcement of the sentence, the Minister shall, without delay, inform the issuing State competent authority of any escape from custody by the sentenced person.

Head 42. Enforcement to cease

Provide that:

(1) Where the Minister is notified by the competent authority of the issuing State that a sentenced person in custody in the State is entitled to be released from detention forthwith or on and from such date as may be specified in the notification concerned, the sentenced person shall be released from prison either forthwith or on and from that date, as may be appropriate.

(2) Where the sentenced person is released—

(a) under *subhead (1)*;

(b) where the sentence has not commenced or the sentenced person has been released from custody following the grant of an amnesty or pardon under the law of the State or the issuing State; or

(c) following the completion of the enforcement of the sentence;

the Minister shall notify the competent authority of the issuing State without delay.

Head 43. Time limit for making determination

Provide that:

(1) Subject to this Head, the Court shall decide under *Head 38* whether to recognise or refuse to recognise a judgment that has been forwarded to the Minister within 90 days of such forwarding.

(2) Where the Court makes a decision to—

(a) recognise or refuse to recognise a judgment under *subhead (1)*, or

(b) adapt a sentence or the duration of a sentence under *Head 38(4)* or *(5)*,

the Minister shall notify the competent authority of the issuing State of the—

(i) final decision;

(ii) reasons for that decision; and

(iii) date of the decision;

without delay.

(3) *Subhead (1)* shall not apply where exceptional circumstances exist that prevent such a decision being made within the period of time referred to in that subhead.

(4) Where *subhead (3)* applies, the Minister shall, without delay—

(a) notify the competent authority in the sentencing state that it is impracticable for him or her to make a determination within the period of time referred to in *subhead (1)*,

(b) inform the competent authority concerned of the nature of the circumstances giving rise to the delay, and

(c) give the competent authority an estimate of the additional period of time the Minister requires to make his or her determination.

(5) The period of 90 days specified in *subhead (1)* shall stand suspended where the Framework Decision Certificate relating to the relevant application is incomplete or does not correspond to the judgment and a request is pending to the issuing State to complete or correct the Certificate.

(6) The period of 90 days specified in *subhead (1)* shall stand suspended where the Minister has requested a translation of the judgment from the competent authority in the sentencing state or is otherwise obtaining a translation of that judgment in accordance with that provision.

Head 44. Specialty

Provide that:

(1) Subject to *subhead (2)*, a sentenced person who is in the State by reason of having been transferred into the State under this Part shall not be prosecuted, sentenced or otherwise be deprived of his or her liberty for an offence (other than the offence for which he or she was transferred) committed before his or her transfer into the State.

(2) *Subhead (1)* shall not apply where-

- (a) the sentenced person concerned has had the opportunity to leave the State and-
 - (i) has not done so within 45 days of his or her release from custody after serving the relevant sentence in the State, or
 - (ii) having left the State after his or her release from custody, he or she has returned to it,
- (b) the offence committed by him or her before his or her arrival in the State is not an offence punishable by a custodial sentence, a detention order or the imposition of a measure which would restrict personal liberty,
- (c) the sentenced person could be liable to a penalty or a measure not involving a deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure in lieu may give rise to a restriction in his or her liberty,
- (d) when the sentenced person consented to the transfer referred to in *subhead (1)*,
- (e) the sentenced person, after being transferred into the State under this Part, expressly and voluntarily renounces his or her right under *subhead (1)* with regard to specified offences preceding his or her transfer, having had access to legal advice, or
- (f) where an application having been made in accordance with *subhead (3)*, the competent authority of the issuing State gives its consent to the prosecution, sentencing or deprivation of the liberty of the sentenced person referred to in *subhead (1)*.

(3) The Minister may apply to the competent authority in the issuing State for the consent referred to in *subhead (2)(f)*.

(4) An application under *subhead (3)* shall be accompanied by the information set out in *section 33(2)* of the *European Arrest Warrant Act 2003* and any necessary translation thereof.

PART IV – Transit, Interaction between the Act and the Transfer of Sentenced Persons Acts and Transitional Provisions

Head 45. Transit

Provide that:

- (1) Transit through the State of a sentenced person being conveyed from one Member State to another Member State may be granted by the Minister, subject to receipt of a transit request and a certified copy of the Framework Decision Certificate and any requested translation thereof from the issuing State.
- (2) Where a request for transit of a person is received in accordance with *subhead (1)* the Minister shall notify the issuing State if there are any warrants for the arrest of the person or prosecutions pending in respect of the person in the State which may result in the person being detained or otherwise be subject to a restriction on their liberty in the State in respect of an offence committed before the receipt of the transit request.
- (3) The decision on a transit request shall be made insofar as is practicable within one week of receipt of a transit request.
- (4) Where the Minister agrees to a transit request in respect of a sentenced person, the person concerned shall be held in custody in such conditions as the Minister thinks appropriate, for such time as transit through the State requires.
- (5) The Minister may arrange for the supervision of such transit by the Garda Síochána and the person concerned shall be deemed to be in the custody of any member of the Garda Síochána accompanying him pursuant to such arrangement.
- (6)
 - (a) This subhead applies to an aircraft that has taken off from a place (other than the State) and that is scheduled to land in a place (other than the State) and on board which there is a person who is being conveyed to an executing State pursuant to Article 15(1) of the Framework Decision.
 - (b) Where an aircraft to which this subsection applies lands (for whatever reason) in the State, the issuing State shall, upon its landing or within 72 hours of landing, provide the Minister with a certified copy of the judgment and relevant documentation.
 - (c) While an aircraft to which this subhead applies is in the State, a person referred to in paragraph (a) who is on board that aircraft shall be deemed to be in transit through the State and subhead (2) shall apply accordingly.

Head 46. Interaction between the Act and the Transfer of Sentenced Persons Acts and Transitional Provisions

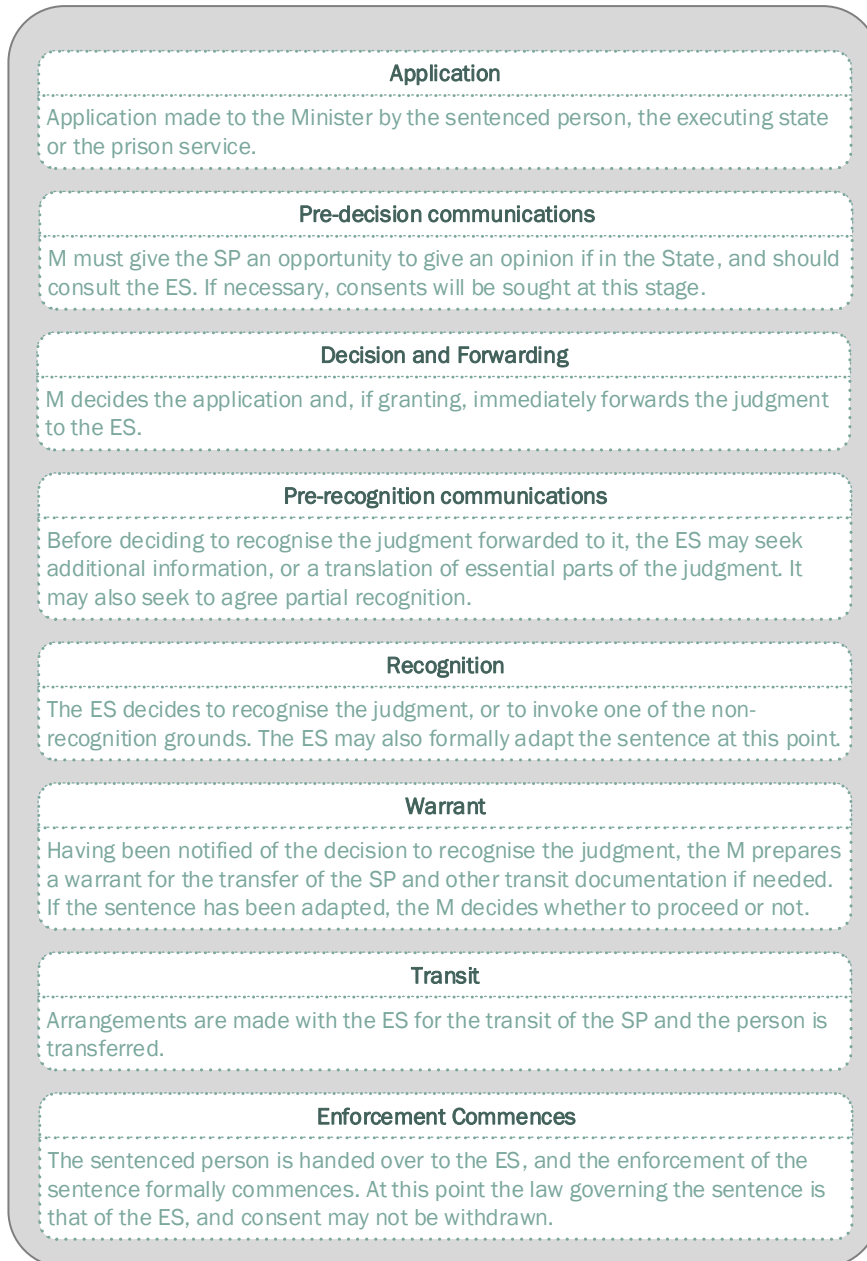
Provide That:

- (1) For the purposes of applications between the State and Member States who are party to this Framework Decision, the provisions the Act of 1995, the Act of 1997 or the Act of 2005 shall no longer apply from the date of commencement of this Act.
- (2) If, before the commencement of this Part any steps have been taken under the Act of 1995, the Act of 1997 or the Act of 2005 in relation to the transfer of a sentenced person, then, the provisions of that Act shall, on and after the said commencement, continue to apply in relation to that application and the sentenced person shall be dealt with under and in accordance with that Act.

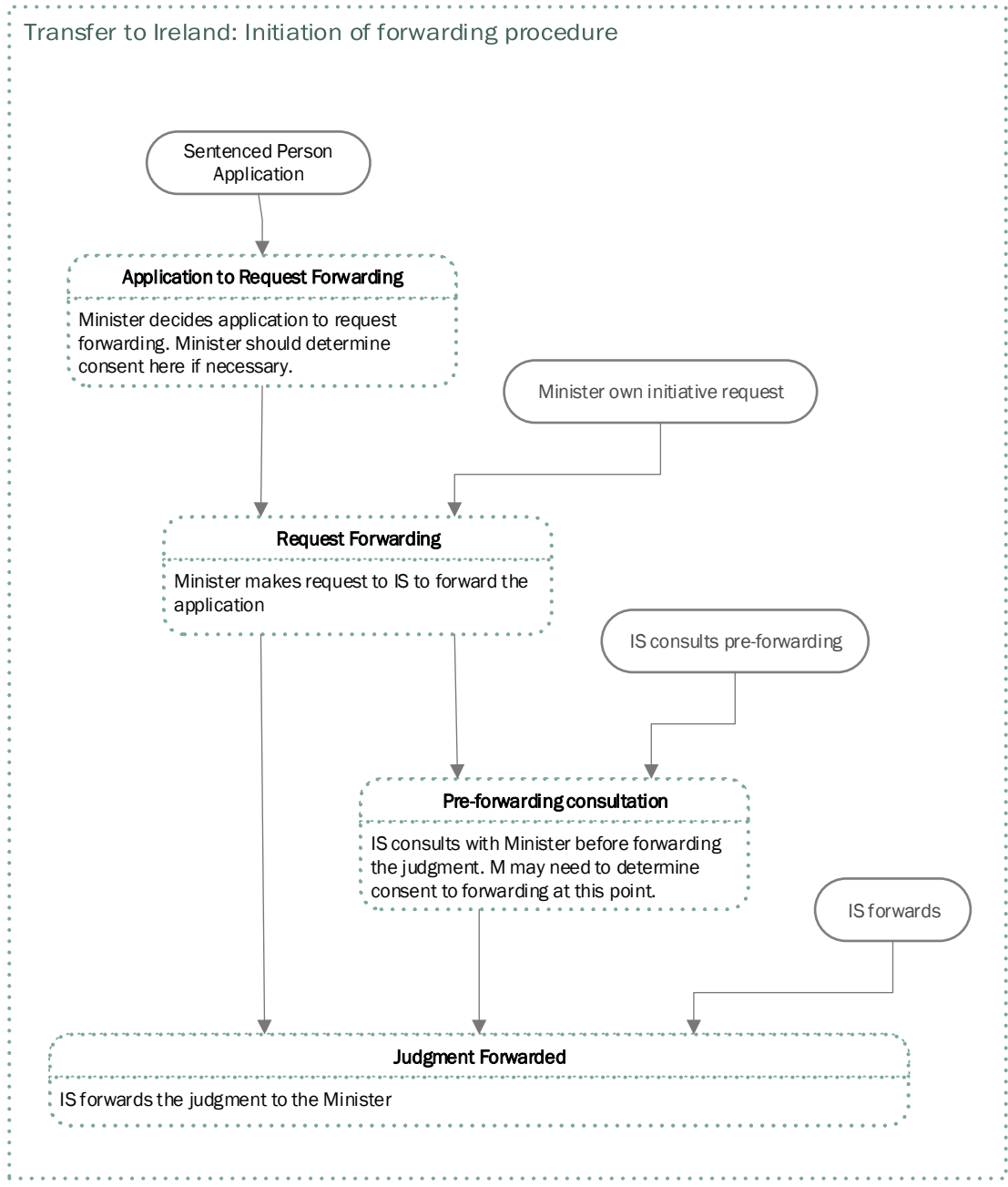
Appendix: Notes on Process

Outward: Ireland is Issuing State

Person is sentenced in Ireland and is transferred to another Member State



Transfer to Ireland: Initiation of forwarding procedure



Post-forwarding: General division of responsibilities between Minister and Court for recognition

Minister	Court
<ul style="list-style-type: none"> • Determine Ministerial consent • Engage in consultation with IS and agree partial recognition if needed • Make application to Court 	<ul style="list-style-type: none"> • Assess if non-recognition grounds exist • Adapt sentence • Determine whether recognition is in interests of justice where non-recognition grounds exist

- | | |
|---|--|
| <ul style="list-style-type: none">• Determine consent to recognition if non-recognition ground exists | <ul style="list-style-type: none">• Issue orders |
|---|--|

General Comments

- **Acronyms**

SP – Sentenced person

IS – Issuing State ('from' state)

ES – Executing State ('to' state)

- **Executing State (ES) vs Competent Authority of Executing State (CA):** the judgment is forwarded to the CA, with the CA's consent if necessary. Thereafter the CA recognises the judgment and the ES enforces the sentence.
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