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**A Review of the Operation
of the 1995 Transfer of Sentenced Persons Act
by the
Transfer of Prisoners Group**

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THE TRANSFER OF PRISONERS GROUP

CAJ

ICPO

NAPO

NIACRO

A REVIEW OF THE OPERATION OF THE 1995 TRANSFER OF SENTENCED PERSONS ACT.

Produced by : Transfer Group comprising of:

- Committee on the Administration of Justice (CAJ)
- Irish Commission for Prisoners Overseas (ICPO)
- National Association of Probation Officers (NAPO)
- Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)

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INTRODUCTION

It is two years since the Transfer Act permitting the transfer of sentenced prisoners in and out of Ireland was brought into force. The Act ratified the European Convention on the Transfer of Sentenced Persons of 1986. The Republic of Ireland was the last country in the European Union to ratify the Convention.

Both the Convention and the Act are based on the humanitarian principle that prisoners be allowed to serve their sentences in their country of origin to facilitate family contact. The aim of this briefing paper is to outline the current situation from the viewpoint of agencies experienced in working on transfer issues for the past 10 years.

18 prisoners were transferred to the Republic in the two year period since November 1995. All these transfers are welcomed, but we believe that a great deal of work remains to be done in order to deal with the large number of applicants who have been waiting for a transfer for months and in some cases for two years. Some suggestions for speeding up procedures are outlined in this report, but it is important to emphasise that the suggested measures will not remove the major factors causing delays in the processing of applications. A review of current transfer procedures and an examination of the problems arising such as the number of applications which are resolved without transfer - should be undertaken by both the Irish and British governments

The report points out problems faced by prisoners who are seeking transfers to the Republic from the UK and other countries. It also examines the changes in the legislation dealing with inter-jurisdictional transfers to Northern Ireland, from prisons in the UK, which have alleviated some of the problems faced by prisoners who were granted temporary transfers and who were unhappy about the conditions of their transfers.

The Transfer Group is made up of four independent agencies; the Irish Commission for Prisoners Overseas (ICPO), the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), the Committee for the Administration of Justice (CAJ) and the National Association for Probation Officers (NAPO). The Group will continue to monitor the application of the Convention in the Republic and transfers to Northern Ireland and highlight issues of concern to prisoners and their families. This report covers the period from November 1995 to November 1997.

PART I

THE REPUBLIC

Transfer to Ireland - The First Year 1996

The Transfer Group welcomed the transfer of 8 prisoners transferred to prisons in Ireland in 1996. Applications took an average of 10 months to be fully processed from the date of application to the date that the actual transfer took place. However even among these first 8 cases there was a considerable difference in the length of time it took for each transfer to be effected.¹ This was taken as a sign that the Act and its operation were flexible but it also frustrated prisoners and their families who could not estimate how long it would take for their transfer applications to be processed.

The Transfer Group anticipated that small numbers might be transferred in the first year of operation, due to the need to establish procedures and practice. We welcomed the transfer of eight prisoners. However, it was hoped and expected that once the procedures had been established the rest of the 125 applications or expressions of interest² would be processed more quickly.

A total of 20 prisoners had their applications approved by the Minister for Justice by December 1996 and it was expected that the remaining 12 prisoners would be transferred in early 1997.

Transfer to Ireland in 1997

At the time of writing only 4 of these prisoners, whose applications were approved by the Minister for Justice by December 1996, had been transferred to the Republic in 1997. The remaining 8 prisoners have yet to be transferred. However 6 more prisoners whose applications were approved by the Minister for Justice in 1997 have also been transferred. The flexibility of the Act and the willingness of the authorities to make a priority of urgent cases are welcome. It is now time to address urgently the need to transfer prisoners who have been waiting for the past twenty two months to have their applications processed.

Ten transfers to the Republic have taken place since the beginning of 1997. To date it has taken an average of 16 months for every transfer to take place compared to an average of 10 months for 1996. The quickest transfer took place within 10 months of the initial application being made and the longest took 22 months to process fully.³ 9 non-republican prisoners and 1 republican prisoner have been transferred to the Republic so far. Between 4 and 6 prisoners are due to be transferred within the next few months. The 10 prisoners who have been

¹ In three of the cases the transfers took 6 months, in 3 of the cases the transfers took a year and in 2 of the cases the transfers took 13 months.

² 125 prisoners expressed an interest or applied for transfer between 1 November and 31 December 1996. Of these prisoners eight or 6.4% were transferred.

³ Based on the data from 6 prisoners transferred in 1997 who were on ICPO files. One transfer took 10 mths, another 10 1/2 mths, another 17 mths, another 18mths, another 21 mths and another 22 mths

transferred back so far are welcomed but the process is moving too slowly. There is a large backlog of cases that needs to be dealt with and it is obvious that there are problems in the process that need to be addressed. The numbers transferred thus far account for only 15% of the total number of applications or expressions of interest received by the Department of Justice by December 1996.⁴

As of October 1997, 93 applications had been formally transmitted to the Department of Justice from the British Home Office and the authorities of other countries. The Minister for Justice has approved 42 of the cases yet only 18 transfers have taken place. This clearly shows that the process is moving too slowly⁵. The other 24 prisoners approved by the Minister for Justice are still awaiting transfer or have withdrawn their applications in frustration at the length of time it has taken, since the initial application, for their cases to be processed.

By November 1997, two years after the implementation of the Act the Irish and British governments should have established a set of procedures that enable them to transfer prisoners quickly. The evidence to date shows that speedy transfer can happen when circumstances dictate, but it is not the norm. The Transfer Group welcomes the fact that the operation of the Act is flexible and can therefore make a priority of a case where there are exceptional needs or circumstances. The current Minister for Justice John O'Donoghue proposed an amendment to the Bill in 1995 which envisaged the drawing up of criteria which would determine priority cases. This would include prisoners who have elderly or ill parents or prisoners who themselves are seriously ill.

The Transfer Group would welcome the use of such criteria if they were transparent and made known to all prisoners on application for transfer.

However applications made in November 1995 should also be processed with some urgency at this stage. Some of these applicants have been waiting for up to 10 years for the Convention to be ratified by the Irish government and have been waiting for a further 2 years to have their applications processed. There is a specific group of 11 life sentence prisoners whose applications have been approved by the Irish Minister for Justice but have been awaiting the Home Secretary's approval for a number of months. One of these prisoners has now been waiting for a year to have his application approved by the Home Secretary. This is an unacceptable delay.

Applicants have a legitimate expectation that their applications be dealt with within a reasonable time-frame. Two years is not a reasonable time-frame. We believe that additional resources are needed, especially in the Home Office, to deal with the backlog. However, in the absence of the 'political' will to transfer prisoners, regardless of offence, no amount of resources can offset the delays.

⁴ 18 prisoners have been transferred while 125 applications or expressions of interest were received.

⁵ Figures from the Department of Justice. These figures are the number of actual applications formally received by the Department of Justice and do not include any expressions of interest made between December 1996 and October 1997

Resolution without transfer

1996: 7 applications for transfer which were submitted between November 1995 and December 1996 were 'resolved without transfer'. In one of these cases a man died in prison while his papers were being processed. This case underlines the absolute importance of ensuring that transfer applications are dealt with quickly. The other prisoners either withdrew their application because of frustration or were released before their applications progressed very far, in some cases after waiting for over a year to have their applications processed. This is a problem that became more pronounced in 1997.

1997: To date more applications have been resolved without transfer than have been with transfer.⁶ During the months of September and October 1997 5 prisoners known to ICPO have withdrawn their applications. Of these, 3 had been approved by both the Department of Justice and the Home Office. Their consent was needed before a transfer could be effected but they chose to withdraw their applications. Recently a prisoner who had been waiting for a transfer since November 1995 died in prison in England. Other prisoners say he could no longer tolerate the waiting and the disappointment. This shows again the need for both the Irish and British governments to review their procedures. The deaths of 2 prisoners who had applied for a transfer to the Republic in the past two years clearly points to a need for a review of procedures without delay.

Many prisoners have expressed to us their frustration at the length of time it took to process their applications. Other factors, such as the extra time that prisoners serve on their return to Ireland because of the difference in remission rates, also influenced their decisions; but the sense of frustration felt by these prisoners and many others is a major factor in their decisions to withdraw their applications. The Transfer Group feels that this problem needs to be addressed.

Slow progress:

63 % of the applications which were being actively processed by the Department of Justice in December 1996 have not been fully processed and the applicants are still awaiting transfer.⁷ The 18 prisoners transferred in 1996 and 1997 only account for 15% of the number of prisoners who have applied or expressed an interest in transfer since November 1995. These figures do not include expressions of interest and applications made since the beginning of 1997.

It is worth noting that the Home Office has stated that it now receives on average only 3-4 applications for transfer to the Republic of Ireland per month. The Transfer Group always held the view that requests for transfer would substantially reduce once the 10 year backlog of people hoping to transfer home is cleared. This appears to be reflected in the numbers of new transfer requests received by the Home Office and the Irish Department of Justice. It is important that the backlog of cases is cleared as soon as possible. The Irish Minister for Justice in her report on the operation of the Transfer Act, covering the period from November

⁶ At least 20 applications have been withdrawn and 18 prisoners have been transferred back to the Republic.

⁷ By December 1996 20 applications had been approved and a further 28 were under consideration. To date 18 prisoners (or 37.5% of the 48 applications) have been transferred.

1995 to December 1996, does not comment on the fact that 125 expressions of interest in transfer were received by the Department of Justice in the first year of operation of the Convention, a number that exceeded the estimates of both the Department of Justice and the Transfer Group. A flood of prisoners wishing to transfer home was one of the reasons why successive Governments did little or nothing to implement the Convention. However, the report does not allude to any particular difficulties caused by the large numbers seeking transfer to the Republic. This would appear to suggest that these 125 applications are manageable but the Transfer Group believes that urgent change must be brought about to speed the process up and to deal with these applications as many of these applicants have now been waiting for two years for a decision on their cases.

In the 1996 report by Minister Nora Owen on the operation of the Transfer Act in its first year she stated that she had *'also met with the Home Secretary ..and we agreed on the importance of processing transfer applications without due delay'*. The Transfer Group believes that a wait of 24 months amounts to an 'undue delay' and that procedures must be changed to remedy this.

Procedures

The Transfer Group believes that one of the major problems lies in the procedures. The Irish Department of Justice, the Home Office and the Northern Ireland Office have shown flexibility and compassion in many of the cases they have dealt with. We believe that their good intentions and the humanitarian objective of the Act are being severely hampered by the complex procedures which govern the processing of transfer applications. **Many of these procedures do not have the force of law, as they are not based in the Convention or in the Act.** Rather they are based on executive agreements between governments and civil servants and could be changed if there was a will to do so. It would be difficult to bring about a change in the Convention, as the consensus of all the States party to it would be needed. Procedures can be changed more easily and these changes in procedure could have as far reaching consequences as a change in the Convention or in the Act itself.

Given the fact that over 93% of prisoners who wish to transfer to a prison in the Republic are imprisoned in the UK⁸, and that 89% of the prisoners applying for a transfer out of the Republic in 1996 wished to transfer to the UK or Northern Ireland⁹, it is important that the two governments co-operate closely to streamline and improve procedures.

The British government recently reviewed arrangements for the handling of inter-jurisdictional transfer requests. The Transfer Group hopes that this will encourage both the Irish and British governments to implement procedural changes that are timely and necessary to the handling of inter-state transfers.

We call on both governments to review the procedures governing transfers in light of the experience that we and they have gained over the last two years. The Minister for Justice stated in her report on transfer to the Dáil in 1996 that *'the length of time is also influenced by*

⁸ Based on the country of imprisonment of 93 prisoners who have applied for transfer since November 1995. 87 of these 93 prisoners are in prison in England.

⁹ Based on figures given in Appendix 4 of the report by the Minister for Justice on the operation of the Transfer Act from January 1, 1996, to December 31, 1996.

the complex but necessary procedures that have their roots in the Convention and to a lesser extent, in our own Act'. The Transfer Group agrees that these procedures are 'complex' but do not believe that they should all be 'necessary'. Changes should be made that would make the procedures more open, speedy and effective to clear the backlog of cases.

Suggestions for temporarily simplifying procedure

Whilst the Transfer Group recognises the need for due care and concern for details in procedural matters, many current practices are excessively cumbersome and cause unnecessary delays. For example, if the Chief State Solicitor's office in the Republic needs extra information about a prisoner from a prison in England, they do not write directly to the prison. They must first write to the Department of Justice who write to the Home Office relaying this request. The Home Office then contact the prison, and when the information is received the whole process is repeated but in reverse. This understandably can take a long time but the Transfer Group feel that better co-operation between the Department of Justice and the Home Office could help to speed up these procedures. **The Minister for Justice, John O'Donoghue recently stated that the Department of Justice hope that continued co-operation with the Home Office will mean that the exchange of information will be less bureaucratic and speedier.** We would welcome such a move.

In the meantime other measures which would speed up the process somewhat would be easy to implement. Prisoners should be told, when applying for a transfer, what they can do to help speed up the process. All prisoners who wish to transfer to the Republic must prove that they have connections with the country. When they first apply they should be asked to send a copy of their birth certificate and the names of family and friend who would visit them in Ireland if they were to be transferred, to the Department of Justice. This information will be sought by the Department of Justice at a later date, and can often lead to delays in the application procedure.¹⁰

Similarly the UK authorities could tell prisoners what they could send to the Home Office in order to speed up the procedure on the UK side. This would include asking prisoners to send photographs of themselves, and copies of the legislation that they were prosecuted under. These steps are simple but could speed up the procedure greatly. It would be hoped that the Department of Justice, having worked with the legislation for the past two years, and the Home Office, who have worked with transfer for the past ten years are in a position to tell prisoners what they can do to help themselves.

They might also advise, as might our own agencies, that remission on sentences is less in the Republic than in England. This might help to eliminate the last minute withdrawal of applications as prisoners learn that they will serve a certain number of months longer on their return.

It is important to remember that these suggestions will do nothing to speed up the long delays that prisoners face when waiting for the approval of the Minister for Justice and the Home Secretary or where information on a prisoner is needed from a prison. The measures suggested above can at best speed up the gathering of some of the information needed in

¹⁰ Prisoners known to ICPO have spent between 5-8 months trying to prove their Irish connections.

order to process an application but it will do nothing to change the basic procedures which cause delays. Therefore while these measures would be welcomed by the Transfer Group they should only be seen as temporary measures while a comprehensive review is undertaken by both Governments with a view to streamlining and improving the existing procedures.

Special Groups

Life Sentence Prisoners and Tariffs: A worrying trend has emerged in relation to life sentence prisoners who have not served their tariffs and who have applied for transfers. A tariff is the period that life sentence prisoners are required to serve to satisfy the requirements of retribution and deterrence before being considered for release on life licence.

In these cases the approval of the Home Secretary himself is needed before a prisoner can be transferred. The applications of 7 life sentence prisoners have been with the Home Secretary for an average of 4½ months since their cases were approved by the Minister for Justice. One individual has been waiting for 11 months to have his application approved or refused.¹¹

This is another example of procedure that needs to be changed. **The requirement that a prisoner has to have served his/her tariff before being transferred is not a legal requirement under the Convention or in the domestic law of either the UK or the Republic.** It is a policy decision and while it is important the Transfer Group is of the view it should not be necessary to delay the applications. We believe that this practice could and should be changed.

85% of these life sentence prisoners applied for transfer in November 1995¹² and two years later not only have they not been transferred but their applications have yet to be approved. One of these prisoners has recently died in prison.

We urge the Home Office to act quickly on these cases as a two year wait for the approval of the Home Secretary is unacceptable and contrary to the humanitarian ideals of the Convention.

Furthermore, it is frequently this group of prisoners who most need transfers in order to maintain family relationships which are already vulnerable after long periods of separation, in some cases without any visits. Such transfers are essential to improve the chance of successful reintegration on their eventual release from prison.

Delays in setting tariffs: Prisoners who do not have a fixed tariff are ineligible to apply for transfer until their tariff has been set. 4 Republican prisoners have been waiting for 22 years to have their tariffs set and are still waiting despite assurances in December 1996, by the Home Office that they would be set by Spring 1997¹³. Tariffs are ordinarily set a year after

¹¹ The prisoner applied in November 1995 and had his application approved by the Minister for Justice on 10/12/1996

¹² Of the 7 life sentence prisoners who are awaiting the approval of the Home Secretary 6 applied for a transfer in November 1995. The prisoners had, on average, a 16 month wait from the date of their application to the date that their applications were approved by the Minister for Justice. The longest wait was for 20 months (2 prisoners) while the shortest wait was for 13 months (1 prisoner). Data from ICPO files.

¹³ The assurances were made to Gareth Pierce.

sentencing by a Home Office Minister who is acting on recommendations made by the trial judge and the Lord Chief Justice¹⁴. Prisoners are entitled to make representations and these will be taken into account. It is totally unacceptable that these men have been waiting for 22 years and continue to wait. The Transfer Group urge that their tariffs be set without further delay and that their transfers be expedited.

Republican prisoners transfers

1996: In 1996 7 Republican prisoners were transferred to the Republic, six from the UK and one from the USA. These transfers took place because of a commonly held view of the importance of prisoners' issues to the Peace Process. The importance of these transfers taking place is acknowledged in the report that the Minister Nora Owen gave to the Dáil ; *"transfers are also an important part in the broader context of the Peace Process"*.

1997: Despite the widely held view that the transfer of Republican prisoners has an impact on the peace process only one Republican prisoner has been transferred to the Republic since December 1996. This prisoner was transferred from the US.

21 Republican prisoners applied for transfer from the UK to the Republic since November 1995 yet only 7 were transferred from the UK in 1996 and none were transferred so far this year. It would seem that the delay is as a consequence of the failure by the Home Secretary to endorse these transfers. However 3 Republican prisoners had their applications approved by the Home Secretary after a wait of 8 months and were transferred just as we went to print, in early December i.e. into the third year of operation of the Convention. The remaining 11 applications should be dealt with quickly.

The Transfer Group urges both governments to expedite these transfers. It would be an act of good faith on the part of the Irish and British Governments to see that these transfers take place without any further delay particularly in light of the reinstatement of the IRA cease-fire.

Notwithstanding this we support the transfer of all prisoners, regardless of conviction, to facilitate family contact.

Transfer Out of the Republic

ICPO welcomes the fact that the Irish Government did not choose to exercise its right to limit the excess of inward over outward transfers in the light of availability of prison spaces in 1996. In that year 8 prisoners were transferred into the Republic while 1 prisoner was transferred to the UK from the Republic. In 1997 10 prisoners have been transferred in¹⁵ and ten prisoners have been transferred out¹⁶. It is expected that a further 4 prisoners will be

¹⁴ They were sentenced to life with the recommendation that they serve no less than 30 years.

¹⁵ As of September 1997 8 prisoners had been transferred from the UK to the Republic, 1 prisoner had been transferred from Hong Kong and 1 was transferred from the US. (However a further 3 were transferred just as we went to print).

¹⁶ 4 prisoners were transferred to England and 6 prisoners were transferred to Northern Ireland (A further 3 prisoners were recently transferred to Northern Ireland from the Republic).

transferred out of the country within the next few months. Thus in the second year up to November 1997, a balancing act took place - in practice if not in principle.

The Transfer Group intends to monitor this development and hopes that the government will continue to look at each case on its merits.

Transfers from countries other than the UK

Prisoners seeking transfers to the Republic from countries outside the UK face particular problems.

USA: The US Federal Government is a party to the European Convention on the Transfer of Sentenced Persons. However, not all States have ratified the Convention which means that not all foreign prisoners imprisoned in the US are eligible for transfer. A bi-lateral treaty with each of these States who currently do not allow transfer would have to be negotiated before a transfer could take place.

In States where the Convention has been ratified problems also exist. Although the first transfer to the Republic, after the passing of the Act, was from the US and was processed in a short period of time, the time it takes to send information from state to federal level is a problem for prisoners. This is a problem that has been noted by other agencies dealing with transfers from the US who estimate that a transfer application can take up to 18 months to process.¹⁷ The handing down of indeterminate sentences also causes problems as these are difficult to convert into sentences which can be administered under Irish or Northern Irish law. Furthermore, long minimum sentences are often given which could not be enforced in the Republic or Northern Ireland because the sentence could not be converted to an equivalent here. Finally prisoners may be refused a transfer if their crime is deemed an exceptionally serious offence or if the overall past history of the prisoner shows minimal rehabilitative potential. Ironically, the same principle does not seem to apply to the deportation of prisoners after serving sentences for serious offences. The Transfer Group believes that the Convention should not be used in a punitive fashion. An application for transfer can be refused at either State or federal level.

France: France is party to the Convention and has ratified it yet not all foreign prisoners are eligible for transfer. Prisoners who have been convicted of drugs trafficking offences must also pay a customs fine proportionate to the value of the drugs found in their possession. The fine that the prisoner must pay must be negotiated and settled before a transfer request will be considered. The settled amount must be paid before the transfer can take place. This is in effect a double sentence and is very harsh on the prisoner and his family. In effect it has meant that Irish prisoners thus sentenced have not been able to apply for a transfer since the drugs fine is, in practice, only negotiable towards the end of the sentence.

Canada: It can take up to a year for the Canadian authorities to process and approve an application before it is sent on to the Republic. There can be legal difficulties in converting an offence in Canadian law into a comparable offence under Irish or Northern Irish law. Further difficulties can result from the need to translate documents from French, if the crime is committed in a French speaking region. In the case of 1 Irish prisoner, his application is still being processed despite being agreed in principle over a year ago.

Spain: Prisoners who wish to transfer from Spain can expect to wait for a year for their transfer applications to be processed. Many prisoners are therefore released on parole before their applications have been approved. The language barrier is another problem faced by prisoners as the application must be in Spanish and accompanied by a copy of their sentence documentation.

¹⁷ Prisoners Abroad Newsletter, Vol. 8 Issue No. 1, Spring 1997.

PART II

NORTHERN IRELAND

Transfers to Northern Ireland from England, Scotland or Wales

1996: The transfer of prisoners to Northern Ireland from England has been a particular concern of the Transfer Group for over ten years.

Between 1992 and October 1997 prisoners were transferred to Northern Ireland on a 'temporary' or 'permanent' basis. Prisoners transferred permanently were governed by the Northern Ireland Office while those transferred on a temporary basis remained under the control of the Home Office and the Prison Services. Prisoners transferred on a temporary basis are unable to benefit from the higher remission rates for prisoners in Northern Ireland. Until recently prisoners were refused home leave in preparation for release, compassionate parole to attend funerals and non-ambulant parole to visit relatives unable to visit them because of serious illness. There was inequity of treatment between prisoners on temporary and permanent transfers. The Transfer Group welcomes the fact that these difficulties have now been resolved but is concerned that there is still unequal treatment as regards to access to remission.

Crime (Sentences) Act 1997: Transfers to Northern Ireland from England or Wales are now governed by the 1997 Crime (Sentences) Act that came into effect on October 1, 1997. This Act was brought in to alleviate the problems caused by the use of extended temporary transfers whereby the prisoners transferred remained under the control of the sentencing state. Transfers to Northern Ireland will now be either 'restricted' or 'unrestricted'. In the case of a prisoner granted an unrestricted transfer the remainder of the his/her sentence, spent in the receiving state, will be administered entirely by the receiving state i.e. the Northern Ireland Office. The receiving state will make decisions on temporary release, non-ambulant parole and de-categorisation.

Transfers can still be granted on a restricted basis and in these cases the sending state, i.e. the Home Office reserves the right to control the administration of certain aspects of the prisoner's sentence. For example the sending state can still control release on licence, automatic release and post release supervision for the duration of the time spent by the prisoner in the receiving state. The sentencing state can also recall prisoners on restricted transfers or vary the conditions of their transfer.

But the receiving state can allow home leave or compassionate release. This has already resulted in a number of prisoners getting compassionate release to visit sick and dying relatives. The Transfer Group welcomes this very much.

A welcome feature of the new procedures under the Act is that remand prisoners may be eligible for transfer, but only where there are compassionate or compelling reasons why such a transfer should be granted. This opportunity was not available to remand prisoners before the implementation of the 1997 Act.

Presently there are an estimated 30 prisoners on temporary transfers to Northern Ireland. When these transfers expire they must apply for either a restricted or unrestricted transfer or they will be transferred back to England or Wales.

The Transfer Group welcomes the fact that all prisoners in Northern Ireland, be they on restricted or unrestricted transfers will come under the control of the Northern Ireland Office when applying for home leave etc. In our experience this was one of the main points of contention for prisoners on temporary transfers and their families. A further review to speed up procedures would be welcomed, of the 11 prisoners transferred to Northern Ireland since January 1994 each request has taken, on average, 13 months to process.¹⁸ 1 Republican prisoner was promised a transfer to be near his family last July but, to date, remains in an English prison.

¹⁸ Based on Home Office figures of October, 1997

PART III

MISCELLANEOUS

The Prison Officers Association has also welcomed and co-operated with the process to date as have families and the prisoners themselves, to whom each transfer has meant enormous humanitarian benefits, particularly for wives with young families, ill prisoners and the elderly parents of prisoners.

ICPO personnel have visited most of the prisoners who have been transferred and their families. The difference a transfer has made to these people is visible. When relations between a prisoner and members of his or her family are strong the possibilities of successful reintegration are also greater.

The Transfer Group hopes to promote more detailed research into the overall operation of the Convention at the European level. We believe it will become a growing area of need in a Europe with increased migration, opportunities for crime, growing social exclusion and imprisonment.

The Future

Amendments have recently been proposed to both (i) the Convention and (ii) the Irish Transfer Act.

- (i) The proposed Protocol or amendment to the Convention is particularly worrying as it would permit a transfer without the consent of the prisoner concerned, in particular cases. We feel that the Protocol is an abuse of the Convention, which is aimed at facilitating and not forcing transfers. We intend to research this area further.
- (ii) The proposed amendment to the Transfer Act, which was approved by the Cabinet in late November, was not widely available to the public. We understand that it is designed to ensure that lengthy sentences passed on prisoners in the UK, for specific offences which carry a lesser maximum sentence in Ireland, could be served in their entirety by the prisoner if transferred to the Republic.

The amendment also provides for a situation where an offence committed overseas does not have a directly comparable offence under the law of the Republic. The amendment would allow the sentence to be imposed for a crime that is "similar" but not comparable. Both these proposals need further examination. The Transfer Group is concerned that they could have an adverse effect on the numbers of life sentence prisoners who will apply for transfer to the Republic, as the amendment may prove a deterrent to transfer and therefore, reintegration on release. And it is this group of prisoners abroad and their families who benefit most from increased family contact.

