

INTER JURISDICTION TRANSFERS OF OFFENDERS: GUIDANCE

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1 QUICK GUIDE TO SOCIAL WORK ROLE

Transfers from Scotland

A) Serving prisoners (section 11.2)

- Carry out investigations liaising with receiving probation service as necessary
- Provide results of investigations to prison governor

B) Offenders about to undergo supervision or already on supervision (sections 11.3, 11.4)

- Ensure offender has applied for transfer
- Carry out investigations liaising with receiving probation service as necessary
- Provide application, and results of investigations to Parole and Legal Aid Division, Scottish Executive Justice Department.

Transfers to Scotland (section 12)

- Liaise with sending authority
- Ensure Parole and Legal Aid Division, Scottish Executive Justice Department, is aware of proposed transfer in case of life, long term or extended sentence prisoners
- Carry out any necessary investigations
- If transfer is to proceed, ensure valid order under Crime (Sentences) Act 1997 is provided by sending jurisdiction

Who decides? (section 3.1.4)

- Transfers should not take place without the agreement of both receiving and sending jurisdictions.

Breach (section 13)

- Restricted transfers - other than short term prisoners on ACR licence whose offence was committed before 1 January 1999: refer to Sentence Management Group, H.M. Prison Service or equivalent in sending jurisdiction.
- Restricted transfers - short term prisoners on ACR licence whose offence was committed before January 1999 : report to police as offence under section 38 of Criminal Justice Act 1991. Police will prepare report for Procurator Fiscal. Note that corroboration is required.
- Unrestricted transfers - deal with breach in line with National Standards as if sentence had been imposed in Scotland

Variation or removal of licence conditions

- apply to sending jurisdiction where transfer was restricted (section 9.1.2)

PART ONE: INTRODUCTION AND LEGISLATIVE BACKGROUND

2 Background

2.1.1 This circular supersedes previous guidance on cross border transfers including part of Chapter 9 of the National Standards on Throughcare issued in April 1997, and Dear Director letters of 15 January 1997 and 19 December 1997.

2.1.2 The Crime (Sentences) Act 1997 as amended by the Crime and Disorder Act 1998 and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (SI 1999/1820) sets out the legal basis for transfers of prisoners and offenders on supervision within Scotland, England and Wales, Northern Ireland, the Channel Islands and the Isle of Man. This circular sets out the thinking behind the legislation which was implemented on 1 October 1997, describes its effect and provides guidance on practice. The circular also takes account of the effect of devolution on the transfer provisions in the 1998 Act. The equivalent Home Office guidance (Probation Service Circular 52/97) was issued for information under cover of the Dear Director letter of 19 December 1997. The Act applies to transfers requested since 1 October 1997.

2.1.3 The aims of the new provisions are:

- To provide a sound legal basis for the maintenance of offenders' family ties, and improved opportunities for rehabilitation by allowing for transfers where appropriate;
- To meet the individual needs of offenders seeking such transfers and of their families;
- To ensure the efficient and cost effective operation of the transfer arrangements.

2.1.4 The guidance covers arrangements for the permanent transfer of prisoners and released prisoners who are or will be subject to any form of post-release supervision, including children. It does not cover offenders serving community disposals such as probation or temporary transfers for home leave etc. The term “supervision” as used in this guidance refers to any form of statutory supervision following release from custody.

3 The underlying principles of supervision and transfer

3.1.1 The aims of supervision in the community following release from custody are to protect the public, prevent or reduce reoffending and aid the rehabilitation of the offender. Allowing offenders to transfer to other United Kingdom jurisdictions can assist in these aims and be of benefit both to the offender and the public in general. It gives the offender access to the support of his or her close family and makes it easier for family members who want to maintain contact after release.

3.1.2 To this end, offenders in the UK and Channel Islands may request transfers of their supervision on release from custody to one of the other jurisdictions, to take effect either immediately on release from custody or at any point during the period of post release supervision. Serving prisoners may also request to be transferred.

3.1.3 **Offenders have no automatic right to transfer** under the Crime (Sentences) Act 1997. Each request will be considered on its individual merits, but the following points should always be considered:

- Does the offender have close family or residential ties in the jurisdiction to which transfer is sought?
- Does the offender intend to reside in the jurisdiction following the completion of the period of supervision?
- Are there any strong compassionate or other compelling grounds to support the request?
- Would the transfer have an **adverse** effect on the protection of the public, prevention of reoffending or the rehabilitation of the offender?

3.1.4 The authority dealing with any request for transfer should ensure that they have adequate information to consider the points set out at section 3.1.3 and that the receiving authority is able to comply with any additional or special conditions. It is the responsibility of the Secretary of State of the sending jurisdiction or, in Scotland, the Scottish Ministers, to decide if the transfer should proceed. In practice these powers are delegated as set out in section 6 below. **The views of the receiving authority should always be taken fully into account. In particular, if the receiving jurisdiction's authorities were not able to accept a transfer for whatever reason then no transfer order should be made.**

4 THE CRIME (SENTENCES) ACT 1997: Statutory provision for transfer of supervision

4.1.1 Schedule 1 of the Crime (Sentences) Act 1997 contains the main provisions for transfer of supervision. The provisions relate only to applications made after 1 October 1997 and include a new system of “unrestricted” and “restricted” transfers, replacing the provisions set out in the Criminal Justice Act 1991 for the transfer of prisoners within the British Isles. The concept of restricted and unrestricted transfer is fundamental to the legislation and its practical implementation. In practice, it is particularly relevant when receiving an offender from another jurisdiction. The basis for deciding whether a transfer should be made on a restricted or unrestricted basis is set out at section 8 below.

- 4.1.2 If an offender is undergoing or about to undergo supervision in any part of the UK, the Secretary of State (of the sending jurisdiction), or where the sending jurisdiction is Scotland, the Scottish Ministers may, on the offender's application, make an order for that supervision to be transferred to another part of the UK. Serving prisoners may also apply to be transferred. This guidance covers the social work role in relation to both types of transfer.
- 4.1.3 Annex A of this guidance gives a brief guide to the contents of the relevant Schedule (Schedule 1) of the Crime (Sentences) Act 1997. It should be noted that the interpretation of these provisions is dependent on other legislation including the Crime and Punishment (Scotland) Act 1997, and the Crime and Disorder Act 1998. The functions in Schedule 1 to the 1997 Act which are exercisable in or as regards Scotland are exercised by the Scottish Ministers by virtue of section 53 of the Scotland Act. The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (SI 1999/1748) specifies the functions that are in this category. **It is recommended that in cases of doubt legal advice should be sought.**
- 4.1.4 Transfers under the Crime (Sentences) Act 1997 can be triggered only by an application from the offender.

5 National Standards

- 5.1.1 Existing National Standards on transfers between jurisdictions are superseded by this guidance. There is no change to National Standards on transfers **within** Scotland. Specifically, this guidance replaces paragraphs 295 to 298 (Chapter 9: Transfer Arrangements) of National Standards for transfers from England and Wales to Scotland and paragraph 299 (Chapter 9) for transfers to and from Northern Ireland. In respect of transfers **from** Scotland, paragraphs 292 to 294 (Chapter 9), and 454 (Chapter 12: Supervised Release Orders), no longer apply. Form F (at Annex C to this guidance) replaces existing forms for offenders seeking transfer of supervision.

6 Responsibility for dealing with transfer requests.

- 6.1.1 The Secretary of State (Scottish Ministers) in the sending jurisdiction has powers to approve transfers. In practice, the arrangements set out below will operate.

a) a serving prisoner who would be subject to supervision on release from custody makes an application to serve the rest of his sentence and post release supervision in another jurisdiction.

- 6.1.2 In this case, the application would be made to the prison governor, and the prison service would, in consultation with the receiving prison service, determine whether the application should be approved. The social work authority or Probation Service in the receiving jurisdiction must be asked, by the current prison, to produce home circumstances reports to assist in assessment for the purposes of paragraph 3.1.3

above. The social work authority or Probation Service must be consulted **before** a decision is made about the application. Details of social work procedures are set out at 11.2.3 below.

6.1.3 In Scotland the prison governor would receive the initial application but the final decision on all transfer requests from prisoners in Scottish prisons is the responsibility of the Casework Branch of the Scottish Prison Service HQ. In other jurisdictions some decisions, e.g. in England and Wales the transfer of post-release supervision of short term prisoners, may be made by prison governors.

6.1.4 Both HM Prison Service and the Scottish Prison Service intend to issue their own guidance for custodial establishments on such transfers.

b) a serving prisoner who is about to be released and undergo supervision makes an application for transfer so that on release he is transferred directly to the receiving jurisdiction for supervision.

6.1.5 In this case, no prison in the receiving jurisdiction will be involved. As before, the application is made to the prison governor. In the case of a short-term prisoner, the governor or prison service HQ must consult with the receiving social work authority or Probation Service, before deciding whether or not the application should be granted. In practice this should be done by the local social work authority or probation service consulting with the receiving social work or probation authority and then advising the prison authorities.

6.1.6 In the case of a life, long term or extended sentence prisoner, the Sentence Management Group of H.M. Prison Service, or the Parole and Legal Aid Division, Scottish Executive Justice Department, will be responsible, as directed by Ministers, for decisions on transfers. The local social work authority or probation service should consult with the receiving social work or probation authority to obtain the necessary information.

6.1.7 Details of the procedures for both short and long term prisoners are at 11.3 below.

c) an offender who is receiving post release supervision makes an application to have his supervision transferred to another jurisdiction.

6.1.8 In Scotland, the application is dealt with by the Parole and Legal Aid Division of the Scottish Executive Justice Department and their equivalents in other jurisdictions. The Parole and Legal Aid Division, Scottish Executive Justice Department, will deal with the application whether or not the offender is on parole licence or any other form of post release supervision. Again there should be consultation between the social work authority or equivalent in the sending authority and the relevant supervising authority (social work authority or Probation Service) to enable assessment, before deciding whether or not the application should be granted.

6.1.9 In other jurisdictions, arrangements vary. For example, in England and Wales, in the case of life and long term prisoners, the Sentence Management Group of H.M. Prison Service will decide on applications, but for short term prisoners, the transfer order will be issued by the relevant prison governor. Full details are contained in Tables 3 to 6 of this guidance.

6.1.10 Details of the procedures are set out at 11.4 below.

7 Refusing an application for transfer

- 7.1.1 The decision on whether or not to transfer is made by the **sending authority** in the light of the available information. Appropriate reasons for refusal should relate to the considerations set out at 3.1.3 above, including the availability of suitable post-release supervision. The intention of the legislation is to facilitate transfers where appropriate, so any refusal should be made on substantive grounds. It is for the **sending jurisdiction** to decide, taking all the relevant information into account, whether the transfer should proceed (see also para 3.1.4 above).
- 7.1.2 If the offender's request for transfer is refused, the applicant will be notified by the sending jurisdiction in writing, and provided with the reasons for the refusal. In Scotland, the Parole and Legal Aid Division of the Scottish Executive Justice Department (for transfer of supervision, or where an offender is about to be supervised) or the Scottish Prison Service (for transfer of serving prisoners), will be responsible for this task.

8 Restricted and Unrestricted Transfers

- 8.1.1 Any transfer under the Crime (Sentences) Act 1997 must be either "restricted" or "unrestricted". The distinction is important because it determines the relevant law that is applicable following the transfer and may affect the duration of supervision and action in the event of breach of licence or any order.
- 8.1.2 A request which meets the transfer criteria and where there is no effect on the sentence (either in terms of a reduction or increase in time to serve) or on any post release supervision requirement, will normally be granted on an unrestricted basis. In an unrestricted transfer, the law of the receiving jurisdiction should apply. The offender is treated as if their supervision period had been the result of a sentence imposed in the jurisdiction to which they have been transferred. The offender will undergo the remainder of the supervision in the receiving jurisdiction as if it had been an equivalent period of supervision directed to be undergone in the receiving jurisdiction. The supervision will be subject to the statutory and other provisions applicable in the receiving jurisdiction.
- 8.1.3 Where an unrestricted transfer is not appropriate, the Secretary of State (Scottish Ministers) may transfer the supervision of the offender on a restricted basis. In a **restricted transfer**, the law of the sending jurisdiction will continue to apply and the offender will be subject to the same duration of supervision under the same conditions as he would have been in the sending jurisdiction as well as to any other conditions specified. The receiving jurisdiction will administer that supervision in the sense that the offender will be reporting to a supervising officer in the receiving jurisdiction. However, in the case of a restricted transfer from England to Scotland, any breach proceedings would be taken under English legislation (see Section 13 for more details)

- 8.1.4 Irrespective of whether the transfer is restricted or unrestricted, the National Standards of the **receiving jurisdiction** will apply to any supervision.
- 8.1.5 In practice, because of differences in the length of supervision in different jurisdictions, most transfers will have to be made on a restricted basis. For example, in England and Wales, unlike Scotland, all prisoners serving 12 months to 4 years and some of those serving less than 12 months, are released on licence. If the transfer is restricted, the receiving jurisdiction will administer the supervision but the offender will continue to be subject to the law of the sending jurisdiction. If the transfer is unrestricted, the receiving jurisdiction will administer that supervision and the offender will be dealt with under the relevant legislation of that jurisdiction.

9 Restricted transfers - conditions

- 9.1.1 Additional conditions may be imposed by the sending jurisdiction. One of these conditions, that the person remains under sending jurisdiction law, is automatic. Either the offender, or the Secretary of State/Scottish Ministers of the receiving jurisdiction (e.g. where the supervising authority has indicated a need for review), may request a review of the conditions but they may be varied or removed only by the Secretary of State in the sending jurisdiction, or where the sending jurisdiction is Scotland, the Scottish Ministers. The condition that the person remain under sending jurisdiction law can be removed only with the consent of the offender. Any request for variation or removal of conditions of the transfer order will be considered according to the aims of supervision.
- 9.1.2 Application by the supervising officer to have conditions varied or removed should be made to whoever issued the order for the transfer in the first place. This would be the Governor of the prison who released the offender in England and Wales (for sentences of less than 4 years), or the Sentence Management Group, H.M. Prison Service or its equivalent elsewhere, for sentences of 4 years or more. Similarly, applications in respect of offenders transferred from Scotland on a restricted basis should be made to the Parole and Legal Aid Division of the Scottish Executive Justice Department.
- 9.1.3 The subsequent insertion, variation or cancellation of the licence conditions continues to be dealt with under the law of the sentencing jurisdiction. In Scotland, application for changes in licence conditions should also be made to the Parole and Legal Aid Division of the Scottish Executive Justice Department.

PART TWO: PRACTICAL IMPLEMENTATION

10 ARRANGEMENTS FOR TRANSFER: GENERAL

10.1.1 Social work and probation services should liaise to ensure that decisions about transfer and subsequent supervision are made with the benefit of the fullest possible available information. The sending authority may wish to make contact with the receiving authority at an early stage to avoid duplication of effort and, in some cases, unnecessary further work. Potential sending authorities should recognise that the receiving authority needs sufficient and up to date information on which to assess the feasibility of the proposed transfer.

11 TRANSFER FROM SCOTLAND TO OTHER PARTS OF THE UNITED KINGDOM

11.1.1 The sending jurisdiction should ensure that any licence conditions can be enforced in the receiving authority before agreeing the application for transfer. The transfer must be agreed by the Parole and Legal Aid Division of the Scottish Executive Justice Department or the Scottish Prison Service on behalf of Scottish Ministers (see section 5 for respective responsibilities).

11.1.2 Where responsibility for an offender is transferred on an unrestricted basis, he or she becomes subject to the provisions for supervision in force in the receiving jurisdiction, including for breach and recall, and no further contact with the sending jurisdiction is necessary (unless the two services consider that continued liaison would be helpful).

11.2 Serving prisoners

11.2.1 **Sentences of up to 48 Months:** Where the prisoner will be subject to statutory supervision on release i.e. a Supervised Release Order, Short Sentence Licence or Compassionate Release Supervision on release, the process set out at 11.2.4 below should be followed. In most such cases, however, there is no statutory post-release supervision, and only parts a, b, and d of 11.2.3 are required.

11.2.2 Determinate sentences of more than 48 months Extended sentences of any duration Life sentences

All offenders will be subject to statutory supervision (Parole, Non Parole Licence, Compassionate Release Supervision, Life Licence) on release. The process set out at 11.2.3 below should be followed.

11.2.3 Procedure for the social work unit in the prison in dealing with applications for transfer.

- a. Contact the Probation Service in the receiving locality where the prisoner intends to reside on release.
- b. Request a Home Circumstances Report (HCR) from that authority on the intended address or relevant family ties.
- c. Ascertain, in cases where an additional requirement of supervision (e.g. attendance on a sex offender programme) exists or can be anticipated, that such a requirement can be met locally.
- d. Provide the Probation Service with any information likely to affect consideration of the transfer itself. This might include, for example, the nature of the offence(s), the physical or mental health of the prisoner or any perceived risk to a third party.
- e. Where initial verification indicates that there appears to be sufficient grounds for consideration of the transfer to proceed, this will be the trigger for more detailed work. The Social Work Unit in the prison must provide the receiving authority with the necessary information to assist assessment of the likely effect of any transfer of supervision on public protection, risk of re-offending and the rehabilitation of the offender. The following information may be relevant to any consideration of transfer:

- the relevant SER or Pre- Sentence Report (PSR), together with any medical, psychiatric or other reports from the time of sentence(s)
- full list of previous convictions
- the trial judge's report, together with any police reports
- the relevant complaint(s) or indictment(s)
- date of full sentence/ expiry of supervision
- any specific additional conditions attached to or proposed for the licence or order
- any known outstanding charges
- a case summary, including an account of relevant work undertaken in prison and/or on supervision to date
- a current assessment of the needs of, and risks posed by the offender, including any staff safety issues

Note: Not all of this information may be available or necessary, depending on the individual case. The social worker should consider what is appropriate and necessary for the purpose.

11.3 Prisoners about to undergo supervision

11.3.1 The procedure at 11.2.3 above applies also to those prisoners subject to statutory supervision on release who request transfer only from **the day of release**.

11.3.2 Particular care is required to ensure the feasibility of meeting any special or additional licence conditions which are required. For example, not all authorities have ready access to all types of specialist programmes which may be considered necessary for the post release supervision.

11.4 Offenders on Supervision in the Community

11.4.1 Those subject to SRO or Short Sentence Licence:

The Supervising Social Worker must:

- a. Contact the Probation Service in the locality where the offender intends to reside.
- b. Seek verification and assessment of the suitability of the intended address in the other locality.
- c. Ascertain, in cases where an additional requirement of supervision (e.g. attendance on a sex offender programme) exists, that such a requirement can be met locally.
- d. Provide the Probation Service with any information likely to affect consideration of the transfer itself. This might include, for example, the nature of the offence(s), the physical or mental health of the offender, or any perceived risk to a third party.

11.4.2 Where initial verification indicates that there appears to be sufficient grounds for consideration of the transfer to proceed, this will be the trigger for more detailed work. The Supervising Social Worker must provide the receiving authority with the necessary information to assist assessment of the likely effect of any transfer of supervision on public protection, risk of re-offending and the rehabilitation of the offender. The following information may be relevant to any consideration of transfer:

- the relevant SER or PSR, together with any medical, psychiatric or other reports from the time of sentence(s)
- full list of previous convictions
- the trial judge's report
- the relevant complaint(s) or indictment(s)
- date of full sentence/ expiry of supervision
- any specific additional conditions attached to or proposed for the licence or order
- any known outstanding charges
- a case summary, including an account of relevant work undertaken in prison and/or on supervision to date
- a current assessment of the needs of, and risks posed by the offender, including any staff safety issues

Note: Not all of this information may be available or necessary, depending on the individual case. The social worker should consider what is appropriate and necessary for the purpose.

11.4.3 Where the Probation Service are unable to fulfil an additional requirement of SRO supervision (e.g. attendance on a sex offender programme), then the Parole and Legal Aid Division of the Scottish Executive Justice Department should be advised accordingly.

11.4.4 Those subject to Parole or Non Parole Licence

Those subject to extended sentence

Those subject to life licence

11.4.5 The Supervising Social Worker **must**:

- a. Contact the Probation Service in the locality where the offender intends to reside.
- b. Seek verification and assessment of the suitability of the intended address in the other locality.
- c. Ascertain, in cases where an additional requirement of supervision (e.g. attendance on a sex offender programme) exists, that such a requirement can be met locally.
- d. Provide the Probation Service with any information likely to affect consideration of the transfer itself. This might include, for example, the nature of the offence(s), the physical or mental health of the offender, or any perceived risk to a third party.
- e. Where initial verification indicates that there appears to be sufficient grounds for consideration of the transfer to proceed, this will be the trigger for more detailed work. The Supervising Social Worker must provide the receiving authority with the necessary information to assist assessment of the likely effect of any transfer of supervision on public protection, risk of re-offending and the rehabilitation of the offender. Information which may be relevant to any consideration of transfer includes:

- the relevant SER or PSR, together with any medical, psychiatric or other reports from the time of sentence(s)
- full list of previous convictions
- the trial judge's report
- the relevant complaint(s) or indictment(s)
- date of full sentence/ expiry of supervision
- any specific additional conditions attached to or proposed for the licence or order
- any known outstanding charges
- a case summary, including an account of relevant work undertaken in prison and/or on supervision to date

- a current assessment of the needs of, and risks posed by the offender, including any staff safety issues

Note: Not all of this information may be available or necessary, depending on the individual case. The social worker should consider what is appropriate and necessary for the purpose.

11.4.6 If the Probation Service are unable to fulfil an additional requirement of Life, Parole or Non Parole Licence supervision (e.g. attendance on a sex offender programme), then the Parole and Legal Aid Division will decide whether to refuse transfer or to remove or amend the additional requirement to facilitate transfer.

11.4.7 For all offenders on supervision, the offender's application and a report with recommendations should be sent to the Parole and Legal Aid Division for decision. Form F and Form G at Annex C should be used for the offender's application and the report.

This report must contain the following:

- summary of progress on supervision
- compliance with any additional requirements of supervision
- reasons for transfer
- the views of the receiving probation service
- recommendation and criteria used.

12 TRANSFERS TO SCOTLAND FROM OTHER PARTS OF THE UK

12.1.1 In practice, most transfers to Scotland from elsewhere will be on a restricted basis, because in the majority of circumstances the offender would not otherwise be subject to the same level and length of supervision. The relevant authority in the sending jurisdiction will wish to consider the issues raised at 3.1.3 and that any licence conditions can be enforced in the receiving authority before agreeing the application for transfer. Where a serving prisoner applies for transfer but it becomes apparent either at the time of transfer or subsequently that licence conditions cannot be met, it may be possible to agree changes to the licence conditions with the body which is responsible for them. Only as a last resort would it be necessary for the prisoner to be returned to the sending authority for post-release supervision.

12.1.2 Where responsibility for an offender has been transferred on an unrestricted basis, he or she becomes subject to the provisions for supervision in force in the receiving jurisdiction including for breach and recall, and no further contact with the sending jurisdiction is necessary (unless the two services consider that continued liaison would be helpful). Responsibility for making decisions in respect of the offender's licence

conditions, including as to whether breach action should be taken, rest with the body responsible for offenders sentenced and imprisoned in the receiving jurisdiction. In Scotland the Parole and Legal Aid Division of the Scottish Executive Justice Department should be the first point of contact in cases involving life or long term prisoners and those serving extended sentences.

12.1.3 Note that supervision of short term prisoners transferred to Scotland from England and Wales has no statutory basis unless an order under the relevant part of the Crime (Sentences) Act 1997 to transfer the supervision of the offender on a restricted basis has been made. Supervising authorities should therefore satisfy themselves that such an order has been made where appropriate and that they have a copy of the order.

12.2 Serving Prisoners (including those serving prisoners who will be subject to supervision on release who request transfer only from the day of release).

12.2.1 **Sentences of up to 12 Months:** There will normally be no statutory supervision on release. Social work assistance may be provided on a voluntary basis. No Home Circumstances Report is called for when there will be no post-release supervision.

12.2.2 **Sentences of 12 up to 48 Months:** Most transfers, and all of those from England and Wales, should be restricted and prisoners subject to statutory supervision on release.

12.2.3 **Sentences of 48 Months or More (excluding life):** Most transfers, including all of those from England and Wales where prisoners will be subject to statutory provision on release, should be restricted.

12.2.4 **Extended Sentences:** Most transfers should be restricted. Prisoners will be subject to statutory supervision on release.

12.2.5 **Life Sentences:** In all life licence cases the intended nature of the transfer - restricted or unrestricted - should be discussed with the Probation Service and Parole and Legal Aid Division.

12.2.6 The following procedure must be followed by the local authority social work department dealing with an incoming application for transfer:

- a. Acknowledge contact from the Probation Officer in the prison from which the prisoner is seeking transfer.
- b. Provide to the Probation Officer on request an HCR on the intended address or relevant family ties within 6 weeks of the request.
- c. Ascertain, in cases where an additional requirement of supervision (e.g. attendance on a sex offender programme) exists or can be anticipated, that such a requirement can be met locally. (Even if it cannot, this is not an absolute barrier to transfer, although the prisoner may require to transfer back to the sending jurisdiction to meet additional requirements.)

d. Seek from the Probation Service or equivalent any other information likely to affect consideration of the transfer itself. This might include, for example, the nature of the offence(s), the physical or mental health of the prisoner or any perceived risk to a third party.

e. Consider, on the basis of the above information, the criteria at 3.1.3 and any other relevant matters.

f. The social work authority may wish to seek information to make their own assessment of the likely effect of any transfer of supervision on public protection, risk of re-offending and the rehabilitation of the offender, to facilitate discussion with the prison Probation Officer. Relevant information could include:

- the relevant SER or PSR, together with any medical, psychiatric or other reports from the time of sentence(s)
- full list of previous convictions
- the trial judge's report, together with any police reports
- the relevant complaint(s) or indictment(s)
- date of full sentence/ expiry of supervision
- any specific additional conditions attached to or proposed for the licence or order
- any known outstanding charges
- a case summary, including an account of relevant work undertaken in prison and/or on supervision to date
- a current assessment of the needs of, and risks posed by the offender, including any staff safety issues

Note: Not all of this information may be available or necessary, depending on the individual case. The social worker should consider what is appropriate and necessary for the purpose.

12.2.7 Taking the relevant information into account, the local authority social work department will wish to discuss with the Probation Officer the appropriateness of transfer to their jurisdiction in line with the established criteria at paragraph 3.1.3 above. The receiving authority will have regard to the policy intention to facilitate transfers, unless there is a compelling reason not to in any individual case.

12.2.8 The local authority social work department will provide an assessment to the prison governor for onward transmission to SPS headquarters, along with the other relevant documentation.

12.3 Offenders on Licence or Supervision

12.3.1 Most transfers are restricted. The following process must be followed by the local authority social work department dealing with the incoming application for transfer:

- a. Acknowledge contact from the probation service from which the prisoner is seeking transfer.
- b. Provide on request a verification and a suitability assessment of the intended address or relevant family ties.
- c. Ascertain, in cases where an additional requirement of supervision (e.g. attendance on a sex offender programme) exists, that such a requirement can be met locally.
- d. Seek from the probation service any other information likely to affect consideration of the transfer itself. This might include, for example, the nature of the offence(s), the physical or mental health of the prisoner or any perceived risk to a third party.
- e. The local authority social work department may wish to seek (from the probation service or equivalent) their assessment of the likely effect of any transfer of supervision on public protection, risk of re-offending and the rehabilitation of the offender. Information required will include:

- the relevant SER or PSR, together with any medical, psychiatric or other reports from the time of sentence(s)
- full list of previous convictions
- the trial judge's report, together with any police reports
- the relevant complaint(s) or indictment(s)
- date of full sentence/ expiry of supervision
- any specific additional conditions attached to or proposed for the licence or order
- any known outstanding charges
- a case summary, including an account of relevant work undertaken in prison and/or on supervision to date
- a current assessment of the needs of, and risks posed by the offender, including any staff safety issues

Note: Not all of this information may be available or necessary, depending on the individual case. The social worker should consider what is appropriate and necessary for the purpose.

12.3.2 Taking the relevant information into account, the local authority social work department will wish to discuss with the Probation Officer the appropriateness of transfer to their jurisdiction in line with the criteria at paragraph 3.1.3 above. The receiving authority will have regard to the policy intention to facilitate transfers, unless there is a compelling reason not to in any individual case. Special attention will require to be given to ensure that public safety is not compromised and that any additional conditions or requirements can be adequately met in the receiving jurisdiction. In all cases therefore, a thorough assessment of the needs of, and risks posed by, the offender must be undertaken.

12.3.3 The local authority social work department will assess whether the transfer meets the criteria and in particular whether supervision requirements can be met. Where the local

authority is unable to fulfil an additional requirement of supervision (e.g. attendance on a sex offender programme), then the case must be referred to a senior criminal justice service member of staff to decide whether to recommend that the transfer not take place, or discuss with the referring probation service the removal or amendment of the additional requirement in order to facilitate transfer. They should ensure that their views are conveyed in writing to the referring probation service, and may also wish to discuss with the referring service.

13 Action in the event of breach.

- 13.1.1 If the offender has been transferred to Scotland on a restricted basis and is on parole or non-parole or life licence, or is serving an extended sentence then a report should be made to the sending authority. That authority is responsible for taking any necessary action.
- 13.1.2 In the case of a restricted transfer to Scotland of a short term prisoner from England and Wales, action in the event of breach depends on the date on which the offence was committed. For offences committed before 1 January 1999, the breach requires to be dealt with in the sheriff court, under the appropriate English legislation. In the first instance the supervising officer should report the alleged breach, which is a criminal offence under section 38 of the Criminal Justice Act 1991, to the local police force so that they can take the necessary action. (Appropriate guidance is to be issued to police forces.) It should be noted that unlike breach of probation, corroborative evidence is required. Where the offence which resulted in the custodial sentence was committed on or after 1 January 1999, the breach is not a criminal offence and should be referred to the Sentence Management Group at H.M. Prison Service for action instead of the police. HM Prison Service will ensure that the date of the offence is, in future, included in the information transferred with the offender.
- 13.1.3 Where an offender with a supervised release order is transferred on a restricted basis from Scotland, any breach requires to be dealt with by the court which imposed the order.

14 Summary of Transfer Provisions

A. Serving prisoners

Table A1 Transfers of Serving Prisoners from Scotland

From Scotland to England and Wales

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving 12 months up to 4 years	Restricted	Scottish Prison Service (SPS)	HM Prison Service
Transfer of prisoner serving up to 12 months	Normally unrestricted (except where SRO or licence)	Scottish Prison Service (SPS)	HM Prison Service
Long term determinate prisoner	Restricted	Scottish Prison Service (SPS)	Sentence Management Group, H.M. Prison Service (England and Wales)
Life sentence prisoner	SPS to determine	Scottish Prison Service (SPS)	Sentence Management Group, H.M. Prison Service (England and Wales)

From Scotland to Northern Ireland

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving 12 months up to 4 years	Restricted	Scottish Prison Service	NI Prison Service
Transfer of prisoner serving up to 12 months	Normally unrestricted	Scottish Prison Service	NI Prison Service
Long term determinate prisoner	Restricted	Scottish Prison Service	NI Prison Service
Life sentence prisoner	SPS to determine	Scottish Prison Service (SPS)	Life Licence Unit, Northern Ireland Prison Service

From Scotland to Channel Islands

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving 12 months up to 4 years	Restricted	Scottish Prison Service (SPS)	HMP La -Moye, Jersey. States of Guernsey Prison
Transfer of prisoner serving up to 12 months	Unrestricted	Scottish Prison Service (SPS)	HMP La-Moye, Jersey States of Guernsey Prison
Long term determinate prisoner	Restricted	Scottish Prison Service (SPS)	HMP La-Moye, Jersey States of Guernsey Prison
Life sentence prisoner	SPS to determine	Scottish Prison Service (SPS)	Parole Review Committee

From Scotland to Isle of Man

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving 12 months up to 4 years	Restricted	SPS	Isle of Man Prison
Transfer of prisoner serving up to 12 months	Unrestricted	SPS	Home Affairs Department
Long term determinate prisoner	Restricted	SPS	Home Affairs Department
Life sentence prisoner	PMRD to determine	Parole and Legal Aid Division	Home Affairs Department

Table A2 Transfers of Serving Prisoners into Scotland

From England and Wales to Scotland

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving up to 4 years	Restricted	HM Prison Service	Scottish Prison Service
Long term determinate prisoner	Restricted	HM Prison Service	Scottish Prison Service
Life sentence prisoner		Sentence Management Group, H.M. Prison Service (England and Wales)	Parole and Legal Aid Division, The Scottish Executive Justice Department

From Northern Ireland to Scotland

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving 12 months up to 4 years	Restricted	NI Prison Service	Scottish Prison Service
Transfer of prisoner serving up to 12 months	Unrestricted	NI Prison Service	Scottish Prison Service
Long term determinate prisoner	Restricted	NI Prison Service	Scottish Prison Service
Life sentence prisoner		Life Licence Unit	Scottish Prison Service

From Channel Islands to Scotland

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving 12 months up to 4 years	Restricted	HMP La -Moye, Jersey. States of Guernsey Prison	Scottish Prison Service (SPS)
Transfer of prisoner serving up to 12 months	Unrestricted	HMP La-Moye, Jersey States of Guernsey Prison	Scottish Prison Service (SPS)
Long term determinate	Restricted	HMP La-Moye, Jersey States of Guernsey Prison	Scottish Prison Service (SPS)
Life sentence prisoner		Parole Review Committee	Scottish Prison Service (SPS)

From Isle of Man to Scotland

Short term	Basis for Transfer	Sending authority	Receiving authority
Transfer of prisoner serving 12 months up to 4 years	Restricted	Isle of Man Prison	Scottish Prison Service (SPS)
Transfer of prisoner serving up to 12 months	Unrestricted	Isle of Man Prison	Scottish Prison Service (SPS)
Long term determinate	Restricted	Isle of Man Prison	Scottish Prison Service (SPS)
Life sentence prisoner		Home Affairs Department	Scottish Prison Service (SPS)

B. Ex-Prisoners on Post Release Supervision

Table B1: Transfers of ex-prisoners from Scotland

From Scotland to England and Wales

	Basis for Transfer	Sending authority	Receiving authority
Offender on any form of post release supervision following sentence of up to 4 years	Restricted	Parole and Legal Aid Division	Probation Service
Parole/non-parole licence/ life licence	Restricted	Parole and Legal Aid Division	Sentence Management Group, H.M. Prison Service (England and Wales)

From Scotland to Northern Ireland

Offender on any form of post release supervision following sentence of up to 4 years	Restricted	Parole and Legal Aid Division	Northern Ireland Probation Service
Parole/non-parole licence/ life licence	Restricted	Parole and Legal Aid Division	Life Licence Unit

From Scotland to Channel Islands

Offender on any form of post release supervision following sentence of up to 4 years	Restricted	Parole and Legal Aid Division	Jersey Probation Service Guernsey Probation Service
Parole/non-parole licence/ life licence	Restricted	Parole and Legal Aid Division	Parole Review Committee

From Scotland to Isle of Man

Offender on any form of post release supervision following sentence of up to 4 years	Restricted	Parole and Legal Aid Division	Isle of Man Probation Service
Parole/non-parole licence/ life licence	Restricted	Parole and Legal Aid Division	Home Affairs Department

Table B2 Transfer of ex-prisoners on Supervision to Scotland

From England and Wales to Scotland

	Basis for Transfer	Sending authority	Receiving authority
Transfer of offender released on licence following sentence of 12 months up to 4 years under s 33(1) (b) of 1991 Act	Restricted	Probation Service	Local Authority social work department
Parole/non-parole licence/life licence	Restricted	Sentence Management Group, H.M. Prison Service (England and Wales)	Parole and Legal Aid Division

From Northern Ireland to Scotland

Transfer of offender released on licence following sentence of 12 months up to 4 years under section 13(7), 23 and 24 of the Prison Act (NI) 1953, Articles 3 to 6 of the Treatment of Offenders (NI) Order 1976, Articles 26-28 Criminal Justice (NI) Order 1996 or Paragraph 1 of the NI (Remission of Sentences) Act 1995	Restricted	Northern Ireland Probation Service	Local Authority Social Work Department
Parole/non-parole licence/life licence	Restricted	Life Licence Unit	Parole and Legal Aid Division

Transfer from Channel Islands to Scotland

Transfer of offender released on licence following sentence of 12 months up to 4 years under s 33(1) (b) of 1991 Act	Restricted	Jersey Probation Service Guernsey Probation Service	Local authority Social Work Department
Parole/non-parole licence/life licence	Restricted	Parole Review Committee	Parole and Legal Aid Division

From Isle of Man to Scotland

Transfer of offender released on licence following sentence of 12 months up to 4 years under s 33(1) (b) of 1991 Act	Restricted	Isle of Man Probation Service	Local Authority Social Work Department
Parole/non-parole licence/life licence	Restricted	Home Affairs Department	Parole and Legal Aid Division

Note: the legal authority to transfer offenders under Schedule 1 of the Crime (Sentences) Act 1997 is vested in the Secretary of State, or in the case of Scotland in the Scottish Ministers. The agencies listed in the tables above act on delegated authority.

15 ANNEX A - Summary of the Schedule 1 provisions for the transfer of supervision

- Paragraph 4 - Provision for transfers to be made

Paragraph 4 contains the basic provisions for the transfer of supervision. It provides that where a person is under supervision or about to undergo supervision in the UK, the Secretary of State may, by order, transfer responsibility for the supervision to an “appropriate person” in another part of the UK or to any of the Channel Islands. Similarly, it also provides that where a person is undergoing or about to undergo supervision in any of the Channel Islands, the Secretary of State may, by order, transfer the supervision to any part of the UK.

- Paragraph 5 - Conditions

Transfers are subject to such conditions, if any, as the Secretary of State sees fit to impose, and conditions can be varied or removed at any time. However, conditions attached to a ‘restricted’ transfer can be varied or removed only with the consent of the person to whom the transfer relates.

- Paragraph 6 - Defines ‘Restricted’ and ‘Unrestricted’ Transfers

This states that a transfer is “restricted” if it is subject to a condition that the person to whom it concerns remains subject to the provisions of the law, as it relates to supervision, breach and recall, of the sending jurisdiction. An “unrestricted” transfer is simply defined as one which is not subject to any such condition. In addition, it is open to the Secretary of State to attach to a restricted [or an unrestricted transfer – there does not seem to be any distinction] transfer any other condition as may be deemed necessary.

- Paragraph 7 - Return to sending jurisdiction

Supervision which has been transferred on a restricted basis can, by Order, be transferred back to the original sending country or Island.

- Paragraph 8 - Restricted transfers to Scotland from England and Wales

Sub-paragraph (4), described how specified sections of the 1991 Act will apply in place of the corresponding provisions of the law of Scotland. This will vary depending on whether the offence was committed after the Crime Sentences Act 1997 was implemented or before. Also, an offender should be treated, subject to those sections and to any conditions attached to the transfer, as if undergoing an equivalent period of supervision directed to be undergone in Scotland.

There are certain expressions contained in the sections of the Act applied in Scotland under sub-paragraph (4) which need to be changed to reflect the different position in Scotland - sub-paragraph (5) replaces those expressions with the correct terminology for Scotland.

- Paragraph 11 - Restricted transfers to Northern Ireland from Scotland

As above for Scotland, sub-paragraph (4), in conjunction with paragraph 12(1) of the transitional provisions in Schedule 5, provides that, in the case of a restricted transfer of supervision from Scotland to Northern Ireland, specified sections of the Act will apply in place of the corresponding provisions of the law of Northern Ireland, and an offender should be treated, subject to those sections and to any conditions attached to the transfer, as if undergoing, an equivalent period of supervision directed to be undergone in Northern Ireland.

Sub-paragraph (6) replaces certain expressions in the sections of the Act which are applied in Northern Ireland with the correct terminology for that jurisdiction.

- Paragraph 10 - Restricted transfers from Scotland to England and Wales

As with paragraph 8 above (see also paragraph 1 of Schedule 5), but providing for the reverse situation, where the relevant sections of the Prisoners and Criminal Proceedings (Scotland) Act 1993) should apply in England and Wales, in place of corresponding provisions here, in the case of offenders transferred from Scotland on a restricted basis.

- Paragraph 11 - Restricted transfers from Scotland to Northern Ireland

As above, paragraph 11 and the transitional provisions in paragraph 12 of Schedule 5, provide for the relevant legislation and terminology to apply in Northern Ireland when offenders are transferred there from Scotland.

- Paragraph 13 - Restricted transfers from Northern Ireland to Scotland

Sub paragraph (4) provides that if a person's supervision is transferred on a restricted basis from Northern Ireland to Scotland, that person shall be treated for the relevant purposes as if the period off supervision had been an equivalent period of supervision directed to be undergone Scotland. Sub paragraph (5) gives effect to the relevant provisions of Northern Ireland legislation in Scotland, substituting certain expressions which apply in Northern Ireland with the appropriate terminology for Scotland.

- Paragraph 11 - Restricted transfers from Scotland to Northern Ireland

As with transfers from Scotland to England and Wales under paragraph 10, but applying relevant legislation and terminology in Northern Ireland for the purposes of restricted transfers.

- Paragraph 14 - Restricted transfers between the UK and the Channel Islands

Paragraph 14 simply provides that an Order in Council may be made to apply broadly corresponding provisions to those described above for restricted transfers between UK jurisdictions to transfers between the UK and the Channel Islands. This will further extend by virtue of an Order made under paragraph 19, to transfer between the UK and the Isle of Man. (The necessary Orders in Council extending the provision to the Channel Island and the Isle of Man have been made and are in place).

- Paragraph 15 - Unrestricted transfers

Where the transfer of supervision to any jurisdiction in the United Kingdom is to be on a unrestricted basis, sub paragraph (4) provides that the offender shall be treated as if the period of supervision had been an equivalent period of supervision directed to be undergone in the receiving jurisdiction (the difference with the above provisions for restricted transfers being that there would be no conditions attached to the transfer, and no legislation in the sending jurisdiction would be applied in the receiving jurisdiction).

This paragraph also provides that the Secretary of State may appoint any person to exercise any function under the law of the receiving jurisdiction which would apply to an offender transferred on an unrestricted basis. (this may be necessary, for example, in the case of an unrestricted transfer of a short term prisoner to England and Wales, where a CPO in a probation service undertaking the supervision should be given delegated authority to make variations or additions to the offender's licence conditions.)

- Paragraph 19 - Application to the Isle of Man

The Transfer of Prisoners (Isle of Man) Order 1997, made under paragraph 19, enables the provisions of the Schedule which apply in relation to the Channel Islands to apply also in relation to the Isle of Man. Accordingly, the Transfer of Prisoners (Isle of Man)(No 2) Order 1997 applies those provisions (paragraphs 1-7, 15,16, 17 (1)- (4) and 18) to the Isle of Man subject to modifications.

17 ANNEX B - Contact List

See NAPO Probation Directory (Owen Wells) for a full list of all probation services in England & Wales, the Channel Islands, the Isle of Man, Northern Ireland and Scotland. Also included are details of other useful contacts in all relevant areas.

Scottish Executive Contacts

Parole and Legal Aid Division

Alan Quinn

Saughton House

Edinburgh

EH11 3XD

Tel: 0131 244 8528

Adult Offenders and Victim Issues Division

Fiona Hird

Room 27A

James Craig Walk

Edinburgh

EH1 3BA

Tel: 0131 244 5470

18 ANNEX C

The Scottish Executive

**Application for Transfer of Supervision
Crime (Sentences) Act 1997, Schedule 1, paragraph 4(1)**

FORM F

Name:

Date of Birth:

Supervising Authority:

I hereby apply for a transfer of my supervision under paragraph 4(1) of Schedule 1 to the Crime (Sentences) Act 1997 to:

--

(state country or Island within the British Islands to which you wish your supervision to be transferred)

Reason for application

--

Names and address of family members resident in the country or Island within the British Islands to which you wish your supervision to be transferred.	Relationship to you

Do you intend to remain in the country or Island you have applied for transfer to after your supervision period ends?

Yes	
No	

If no, for how long do you wish the supervision to be transferred?

--

Were you ordinarily resident in Scotland at the time of your offence?

Yes	
No	

Declaration

I declare the information set out above is correct to the best of my knowledge and belief.

I understand that if my application is accepted, any order for my transfer may contain conditions imposed by virtue of paragraphs 5 and 6 of Schedule 1 to the Crime (Sentences) Act 1997 and, in particular, it may provide that the transfer is a restricted transfer.

Signature:

Date:

THIS SECTION IS TO BE COMPLETED BY THE SUPERVISING SOCIAL WORK AUTHORITY

**Application for Transfer of Supervision
Crime (Sentences) Act 1997, Schedule 1, paragraph 4(1)**

FORM G

Name:

Date of Birth:

Supervising Authority:
Contact name and phone number:

Country or Island to which transfer sought:

Type of supervision	Duration	End date
Parole licence		
Non-parole licence		
Extended sentence		
Supervised release order		
Life licence		
Short sentence licence		
Other (specify)		

Documentation enclosed (all are required)

Home background report	
Summary of progress on supervision	
Reasons for transfer	
Views of the receiving probation service	
Compliance with any additional requirements of supervision	
Recommendation and criteria used	

Send completed forms to: Parole and Legal Aid Division
Scottish Executive Justice Department
Saughton House
Broomhouse Drive
EDINBURGH

