



## AN BILLE UM EISEACHADADH, 1963 EXTRADITION BILL, 1963

### EXPLANATORY MEMORANDUM

#### General

1. The Bill is a comprehensive measure which proposes to replace the pre-1922 law governing not only extradition to countries outside Britain and Ireland but also the enforcement here of warrants issued in Britain.

2. *Part II* of the Bill deals with extradition to countries other than Britain and Northern Ireland. The principles incorporated in this Part are based on the European Convention on Extradition, a multilateral convention prepared by the Council of Europe and opened for signature in 1957. It is proposed to ratify the Convention when the Bill comes into operation. The Convention follows in general the extradition practice of continental countries rather than the Anglo-American tradition on which the present law, contained mainly in the Extradition Act, 1870, is based. The main features of this Part are—

- (a) Extraditable offences are not being specifically listed as in the 1870 Act; instead an extraditable offence is being defined (*section 10*) by reference to the maximum penalty which may be imposed for it under the law of the two countries concerned (at least one year) or, where the person has already been sentenced, by the actual penalty imposed (at least four months).
- (b) Extradition is being allowed on proof that criminal proceedings have been instituted against a person whose surrender is requested whereas under the 1870 Act evidence sufficient to establish a *prima facie* case had to be made available (*sections 24 and 28*).
- (c) The extradition of Irish citizens is being prohibited unless the relevant extradition arrangement otherwise provides (*section 14*). Where extradition of citizens is prohibited, proceedings for extraditable offences committed in the territory of the other country may be taken against them in our courts where that country so requests and the Attorney General so directs (*section 37*).

3. *Part III* replaces the provisions of the Petty Sessions (Ireland) Act, 1851, as adapted, under which British warrants have been enforced here, on a reciprocal basis, since the establishment of the State and it provides for the enforcement of Northern Ireland warrants. This Part prohibits the surrender to Britain or Northern Ireland of persons who are accused of political offences, offences connected with such offences, purely military offences or revenue offences or in cases where there are substantial reasons for believing that the persons concerned will be prosecuted for political offences or offences connected with them or for purely military offences. Warrants relating to offences punishable by less than three months imprisonment and warrants for imprisonment in default of payment of any sum of money will not be enforced (*sections 41 and*

42 (3)). When the Bill comes into operation, arrangements will be made in Northern Ireland for the enforcement of warrants issued by courts in the State.

#### PART I: PRELIMINARY.

4. *Section 1* contains the short title. *Section 2* provides that the Act shall come into operation on such day as the Minister by order appoints.

5. *Section 3* contains the definitions. The definition of "detention order" follows exactly the definition of this type of order in Article 25 of the European Convention on Extradition. It is an order providing for preventive detention.

6. "Extradition" is defined as the surrender of a person under the provisions of *Part II* to a country in relation to which that Part applies.

7. The exclusion from the definition of "political offence" of the taking or the attempted taking of the life of a Head of State or a member of his family is in accordance with Article 3.3. of the Convention. This provision applies also to surrender to Britain or Northern Ireland under *Part III* of the Bill.

8. *Subsection (2)* of *section 3* provides that the Act will apply, except where otherwise provided, in relation to an offence whether committed or alleged to have been committed before or after the passing of the Act. The exception referred to is in *section 37*, which deals with offences committed abroad by Irish citizens. That section applies only to acts committed after the commencement of the Act. Under the present law (*section 6* of the 1870 Act as amended by *section 2* of the 1873 Act) a "fugitive criminal" is liable to be extradited whether the crime in respect of which his surrender is sought was committed before or after the passing of the 1870 Act.

9. *Section 4* is the usual provision about laying of orders before the Oireachtas. *Section 5* deals with expenses and *section 6* with repeals.

10. *Section 7* provides for the continuation in force of any Orders in Council made before 1922 and directing that the 1870 Extradition Act should apply to various foreign states. The object is to preserve any of such treaties as may still be in force until either extradition agreements have been made with foreign states under the provisions of the Bill or, without entering into a formal agreement, the Government have applied *Part II* of the Bill to that particular country and thus enabled extradition to take place. *Subsection (2)* provides that any such Orders in Council, if not sooner revoked, will expire on 1st January, 1968.

#### PART II: EXTRADITION GENERALLY.

11. *Section 8* deals with the application of *Part II* to any country which has made an international agreement or convention with the State for the surrender of persons wanted for prosecution or punishment. It amends the present law by enabling the Government by order to apply the provisions of this Part to any country notwithstanding that no formal agreement or convention may have been entered into where they are satisfied that reciprocal facilities in the matter of extradition will be afforded by that country (*subsection (1)*). Each order made by the Government must specify the terms of the extradition agreement (*subsection (3)*). Where there is no formal extradition agreement, the order must specify the conditions, exceptions and qualifications to which

the application of the Act in relation to the particular country is to be made subject (*subsection (4)*). *Subsection (5)* provides that these extradition agreements and orders applying *Part II* otherwise than in pursuance of an agreement shall, subject to the provisions of *Part II*, have the force of law in accordance with their terms. The effect of this provision is that the Government will have discretion to make any extradition agreement or provision they wish unless they are specifically prohibited or restricted from so doing by any of the provisions of *Part II*. For example, an extradition agreement providing for extradition for revenue offences or for purely military offences cannot be made but the Government can provide that, in relation to a particular country, extradition will not be granted unless the crime in question is punishable in both countries by a penalty of, say, at least two years or three years, notwithstanding that the Bill allows it to grant extradition for offences punishable by maximum terms of at least one year.

12. *Section 9* is in the nature of an introductory provision reciting a general obligation to extradite a person who is accused or has been convicted and sentenced for an offence in another country. It corresponds to Article 1 of the Convention.

13. *Section 10* follows paragraphs 1 and 2 of Article 2 of the Convention and sets out the offences for which extradition may be granted. It involves a departure from the present law, which is based on the system of listing the crimes for which extradition will be granted, and follows the system of providing for extradition for offences punishable by certain maximum prescribed penalties. The section provides, accordingly, that extradition may be granted where the offence is punishable under the law of both countries by a maximum of at least one year's imprisonment or by a more severe penalty (e.g., death) and, in the case of a person already convicted and sentenced, where the sentence has been imprisonment for a period of at least four months or a more severe penalty. *Subsection (2)* provides that extradition may be granted for lesser offences if they are included in the request for extradition for an offence which is extraditable under the definition in *subsection (1)*. A country which desires to prosecute a surrendered person for an offence not included in the request for extradition and committed before his surrender must first obtain the consent of the Minister for Justice (*section 20*).

14. *Section 11*, in conjunction with the definition of "political offence" in *section 3* of the Bill, gives effect to Article 3 of the Convention. It provides that extradition shall not be granted for a political offence or an offence connected with a political offence (*subsection (1)*). It prohibits extradition also where there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons (*subsection (2)*). "Political offence" in this context does not include the taking or attempted taking of the life of a Head of State or a member of his family (see *section 3*). The corresponding provision of the present law (*section 3 (1)* of the 1870 Act) prohibits extradition for offences of a political character or where the person claimed proves that the requisition for surrender has in fact been made with a view to try or punish him for an offence of a political character. Whether an offence is a political offence or connected with a political offence is a matter to be determined by the Minister for Justice when he receives a request for extradition (*section 25 (4)*) or at any time afterwards (*section 34*), or it may be determined by the District Court under *section 28 (1) (c)* or by the High Court in *habeas corpus* proceedings. Similarly, a decision may be made by the Minister or the District Court or the High Court on the question whether there are substantial grounds for believing that extradition for an ordinary criminal offence has been sought for the purpose of prosecution on political, religious, etc. grounds.

15. *Section 12*, following Article 4 of the Convention, provides that extradition is not to be granted for offences under military law which are not offences under ordinary criminal law. *Section 13* contains a similar prohibition in respect of fiscal offences (Article 5 of Convention).

16. *Section 14* provides that extradition of Irish citizens shall not be granted unless the relevant extradition agreement or, where there is no formal agreement, the order of the Government under *section 8* otherwise provides. There is no provision in the present law restricting extradition of nationals. In British and American practice extradition of nationals is allowed but the reciprocity clause sometimes inserted in extradition agreements has a severely limiting effect as in many countries (for example, Belgium, France, Federal Republic of Germany, Sweden and Turkey) extradition of nationals is prohibited by law. Extradition of nationals has the advantage that it enables the court in the area where the offence has been committed to deal with it. Moreover, non-extradition of nationals implies an obligation that the requested State will itself prosecute the offender for the offence. In fact, the Bill (*section 37*) provides that in such a case proceedings may be taken in our courts against an Irish citizen accused of an offence in a country with which we have an extradition arrangement where the Attorney General, following a request to that effect by that country, directs that proceedings be taken.

17. *Section 15* prohibits extradition where the offence for which it is requested is regarded under the law of this country as having been committed in whole or in part here (Article 7 of the Convention).

18. *Section 16* prohibits extradition where a prosecution is pending in the State against the person claimed for the offence for which extradition is requested (Article 8 of Convention).

19. *Section 17 (1)* gives effect to what is called the *non bis in idem* rule under which extradition may not be granted in respect of the offence for which extradition is requested if final judgment has been passed in this country on the person claimed. *Subsection (2)* provides that extradition may be refused by the Minister if the Attorney General has decided either not to institute or to terminate proceedings against the person claimed (Article 9 of Convention). *Subsection (1)* goes further than the provisions of Article 9 in that it prohibits extradition if final judgment has been passed on the person claimed by a third country.

20. *Section 18*, following Article 10 of the Convention, prohibits extradition where the person claimed has, according to the law of either of the two countries concerned, become immune by reason of lapse of time from prosecution or punishment.

21. *Section 19* is taken from Article 11 of the Convention and prohibits extradition for an offence which is punishable by death under the law of the requesting country but is of a category for which the death penalty is not provided for by the law of the State or is not generally carried out, unless the requesting country gives such assurance as the Minister considers sufficient that the death penalty will not be carried out.

22. *Section 20* incorporates the rule of specialty. This is an internationally accepted rule in accordance with which the requesting State may not, without the consent of the requested State, either try or punish the surrendered person for any act committed before his extradition other than that on which the request is based unless the surrendered person has been restored or has had an opportunity of returning to the requested State (see, for example, *section 3 (2)* of the Extradition Act, 1870). This section

modifies the 1870 Act provision by making it possible for an extradited person to be tried in the requesting country for another offence committed before his surrender with the consent of the Minister; and it defines precisely what is to be understood by a person having had an opportunity of leaving the requesting State, that is, it provides that the surrendered person shall not have the benefit of the rule of specialty where he has had an opportunity of leaving the territory of the other country, but has not done so within forty-five days of his final discharge in respect of the offence for which he was extradited or has returned to the territory of the other country after leaving it. On the other hand, the present provision specifically prohibits alteration of the description of the offence charged in the requesting country unless the offence under its new description is shown by its constituent elements to be an offence which would allow extradition. There is no provision of this kind in the 1870 Act.

23. *Subsection (2) of section 20* provides that extradition shall not be refused merely because the law of the requesting country permits it to take measures necessary to remove a surrendered person from its territory or any measures necessary under its law to prevent any legal effects of lapse of time (Article 14.2 of the Convention). *Subsection (3)* provides that the consent of the Minister shall not be given without a formal request for consent from the requesting country, accompanied by the documents normally required to support a request for extradition as well as a legal record of any statement made by the extradited person in respect of the offence for which consent is required (Article 14.1 (a)). *Subsection (4)* provides that the consent of the Minister must be given if the offence for which it is requested is itself one for which there is an obligation to grant extradition (Article 14.1 (a)).

24. *Section 21*, following Article 15 of the Convention, deals with the prohibition of re-extradition to a third State by a country to which the State has surrendered a requested person if the third State is seeking the surrender of that person for an offence committed before his surrender to the requesting country. It is essentially a "specialty" provision and accordingly *subsection (1)* provides, as in *section 20*, for extradition to a third State to take place either with the consent of the Minister or where the person, having had an opportunity to leave the territory of the requesting country, has not done so within forty-five days of his final discharge in respect of the offence for which he was extradited or has returned to the territory of that country after leaving it. Provision is made in *subsection (2)* that the Minister may request the production of the usual supporting documents before he accedes to a request for consent to re-extradition.

25. *Subsection (3) of section 21* binds the State not to surrender to a third country a person who has been surrendered to the State where the third country seeks his extradition for an offence committed before his surrender. Re-extradition to a third country in such a case is permitted however where the requested country consents or where the person, having had an opportunity to leave the State, has not done so within forty-five days of his final discharge in respect of the offence for which he was surrendered to the State or has returned to the State after leaving it.

26. *Section 22* sets out the procedure for the communication of a request for extradition. It provides, following Article 12.1 of the Convention, that the request must be in writing and be communicated by a diplomatic agent of the requesting country, as defined in section 3 (1), or by any other means provided in the relevant extradition provisions. Under the present law (section 7 of the 1870 Act) the requisition could be made only by some person recognised as a diplomatic representative of the foreign state. This section is more flexible in that it allows the

request to be made by any other means provided in the relevant extradition provisions but normally the request will come through the diplomatic channel.

27. *Section 23*, following Article 17 of the Convention, indicates the considerations to be taken into account by the Minister when dealing with concurrent requests for extradition made by more than one country.

28. *Section 24*, which is based on Article 12.2 of the Convention, indicates the documents which are required to accompany the request for extradition, namely,

- (a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest;
- (b) a statement of each offence for which extradition is requested;
- (c) a copy of the relevant enactments of the requesting country, or a statement of the relevant law, and
- (d) as accurate a description as possible of the person claimed.

This provision involves a departure from the present law, as contained in the 1870 Act, which requires such evidence to be produced as would justify the committal for trial of the prisoner if the offence had been committed here.

29. *Section 25* sets out the procedure following the receipt by the Minister for Justice of a request for extradition. Under *subsection (1)* he may signify to a district justice that the request has been made and thereupon the justice will issue a warrant for the arrest of that person. Such a warrant may be executed in any part of the State (*subsection (2)*). *Subsection (3)* provides that if the Minister considers that he has not sufficient information to enable him to make a decision he may ask the requesting country to furnish further information and may fix a time limit for its receipt (Article 13 of Convention). *Subsection (4)* sets out the cases in which the Minister may refuse extradition at this stage. He may do so if he is of opinion that the offence is one for which extradition is prohibited under any provision of *Part II* or under the relevant extradition agreement or, if there is no formal agreement, under the order of the Government applying *Part II* to the country concerned. *Subsection (5)* provides that an arrested person is to be brought before a Dublin Metropolitan District Justice unless the Minister, under the powers given him in *section 27*, has directed that he be brought before another justice in the interest of the prisoner's health.

30. *Section 26* deals with cases where the provisional arrest of a person is requested by another country as a matter of urgency and is on the lines of Article 16 of the European Convention. Discretion is given to a district justice to issue a warrant of arrest on the sworn information of a member of the Garda Síochána not below the rank of inspector that a request for the provisional arrest of that person has been made, on the grounds of urgency, and provided he is satisfied that the request complies with the requirements set out elsewhere in the section (*subsection (1)*). *Subsection (2)* provides that the request for the provisional arrest must state that one of the documents mentioned in *paragraph (a)* of *section 24* exists (i.e. the original or an authenticated copy of the conviction and sentence or detention order or, as the case may be, of the warrant of arrest) and that it is intended to send a request for extradition. The request must also specify the nature of the offence, when and where it is alleged to have been committed, and give a description of the person whose arrest is sought. Moreover, it must be transmitted by post or telegraph or by any other means affording evidence in writing (*subsection (3)*). A warrant of provisional arrest may be executed in any part of the State (*subsection*

(4). *Subsection (5)* provides that where a justice issues a warrant of provisional arrest he shall forthwith inform the Minister of the issue of the warrant and that the Minister may, if he so thinks fit, order the warrant to be cancelled and the person arrested thereunder to be released.

31. *Subsection (6)* of *section 26* provides for a person arrested under a warrant of provisional arrest being brought before a Dublin Metropolitan District Justice—or such other justice as the Minister may direct in the interest of the prisoner's health—and for the remand of the prisoner pending receipt from the Minister of an order signifying that the request for extradition has been duly received or pending the release of the prisoner by order of the Minister under *section 34 (2)*. *Subsection (7)* imposes a limit of eighteen days for the receipt of a formal request for extradition. If within that period no such request has been received, the prisoner must be released. Paragraph 4 of Article 16 of the Convention provides that provisional arrest may be terminated if, within a period of eighteen days after arrest, the requested party has not received the request for extradition and the supporting documents and that, in any event, the period of provisional arrest should not exceed forty days from the date of arrest. *Subsection (8)*, following paragraph 5 of Article 16, provides that release should not prejudice re-arrest and extradition if a request for extradition is received subsequently.

32. *Section 27* authorises the Minister, on representations by or on behalf of the person arrested, to direct that extradition proceedings be heard before a justice other than a Dublin Metropolitan District Justice, where he is of opinion that this would be in the interests of the prisoner's health.

33. *Section 28* deals with the hearing of extradition proceedings before the District Court. It provides that the court must make an order committing the person to prison (or, if he is not more than 21, to a remand institution) to await his surrender, if it is satisfied on a number of matters, in particular that the prisoner's extradition is not prohibited either by the provisions of *Part II* or by the relevant extradition provisions and that the documents required to accompany a request for extradition have been produced (*subsection (1)*). Under *subsection (2)* the court has specific power to adjourn the hearing to enable further information to be produced as well as the powers of adjournment and remand which it has in ordinary criminal cases. *Subsection (3)* requires the court, when committing the prisoner for surrender, to inform him that he will not be surrendered, except with his consent, until after the expiration of eight days from the date of his committal and also of his right to take *habeas corpus* proceedings (see *section 30*). The court is also being obliged to cause a certificate of the committal to be sent to the Minister. *Subsections (4)* and *(5)* provide, respectively, that where the person claimed is not committed the court must order him to be discharged and that no appeal shall lie to the Circuit Court against an order of the District Court under this section. As explained earlier, this provision differs substantially from the present law (*section 10* of the 1870 Act) which requires such evidence to be produced as would justify the committal for trial of the prisoner if the crime of which he is accused had been committed here. *Subsection (6)* applies to persons detained in a remand institution under this section the provisions of *sections 10* and *11* of the Criminal Justice Act, 1960, which empower the Minister for Justice to transfer them to another remand institution or a prison (*section 10*) and deem them to be in lawful custody (*section 11*).

34. *Section 29* provides that the Minister, where he thinks it necessary to do so in the interests of a prisoner's health, may order him to be removed to a hospital or other place. While in that place he will be in lawful custody. This provision is on the lines of *section 1 (3)* of the 1895 Extradition Act.

35. *Section 30* provides that a person committed shall not be surrendered, except with his consent, until the expiration of eight days from the date of his committal or until the conclusion of any *habeas corpus* proceedings brought by him or on his behalf, whichever is the later. This provision differs from section 11 of the 1870 Act in that—

- (a) it reduces from fifteen to eight days (the maximum period for which an accused person may be remanded in custody without his consent) the period which must elapse before a person claimed is surrendered;
- (b) it allows a person to be surrendered before that period expires with his consent, which must be given before a district justice.

36. *Section 31* follows Article 19.1. of the Convention in authorising the Minister to postpone the surrender of a person claimed in order that he may be proceeded against in the State, or (if he has already been convicted) in order that he may serve any sentence imposed on him in the State, for an offence other than that for which his extradition is requested. The provision in paragraph 2 of Article 19 for the temporary surrender of a person claimed to the requesting party, instead of postponing surrender, is not being enacted as not being appropriate in our circumstances.

37. *Section 32* follows section 11 of the 1870 Act in providing machinery for the surrender of an extraditable person either on the expiration of the prescribed period from committal or the conclusion of any *habeas corpus* proceedings, whichever is the later. As mentioned in the note on *section 30*, the minimum period required to elapse after committal has been reduced from fifteen to eight days and the prisoner may consent to shorten the period still further. *Subsection (2)* authorises the holding in custody and conveyance out of the State of the person surrendered and for his re-taking on escape. *Subsection (3)* follows Article 21.6 of the Convention and provides that the Minister shall not make an order for the surrender of a person where this would involve transit through a territory where his life or freedom might be threatened by reason of his race, religion, nationality or political opinion.

38. *Section 33* provides machinery for the discharge of a person committed for surrender if he has not been surrendered within a reasonable time unless the surrender has been prevented by circumstances beyond the control of either the State or the requesting country. The present law, as contained in section 12 of the 1870 Act, is that if the prisoner is not surrendered within two months after his committal, or, if a writ of *habeas corpus* has been issued, after the decision of the court on the writ, a judge of the High Court, on reasonable notice to a Secretary of State, may order the prisoner to be discharged from custody, unless sufficient cause is shown to the contrary. The Convention provides, in Article 18, for the requesting Party to be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender. If the person claimed has not been taken over on the appointed date, the Convention provides that he may be released after the expiry of fifteen days from that date and shall in any case be released after the expiry of thirty days. The requested Party may refuse a further application to extradite him for the same offence. It provides, however, that if circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited it shall notify the other Party, and that the two Parties shall agree on a new date for surrender, in which case the provisions earlier about release after the expiry of fifteen days and of release in any case after the expiry of thirty days will apply as from the new date.

39. The provision in *section 33* is that the High Court may order a prisoner to be discharged from custody if he has not been conveyed out of the State within thirty days (two months at present)

after the committal, or within thirty days (two months at present) after the conclusion of *habeas corpus* proceedings brought by him or on his behalf, unless it is proved that the state of health of the person claimed or other circumstances beyond the control of the State or the requesting country have prevented the surrender and that he can be surrendered within a reasonable time. The prisoner may be released if not conveyed out of the State within that time.

40. *Section 34 (1)* provides a general power to the Minister to refuse extradition in relation to any person who is for the time being on remand or awaiting surrender under *Part II* whenever he is of opinion that extradition is prohibited under *Part II* or under the relevant extradition provisions. In such a case or where it appears to the Minister that the request for extradition (or, in the case of provisional arrest under *section 26*, the intended request) is not being proceeded with, the Minister is being empowered to order the release of the person concerned, if he is in custody (he may be on bail) (*subsection (2)*).

41. *Section 35 (1)* is based on Article 20 of the Convention and provides that a member of the Garda Síochána executing a warrant for a person who is wanted for extradition may seize and retain any property which appears to him to be reasonably required as evidence for the purpose of proving the offence alleged or which appears to him to have been acquired as a result of the alleged offence, provided that in the latter case it is found at the time of arrest in the possession of the person arrested or is discovered subsequently. *Subsection (2)* provides that any property seized under *subsection (1)* shall be handed over to the requesting country whether the person claimed is surrendered or dies or escapes. Any property so seized may be retained in the State if it is connected with criminal proceedings in the State until the termination of the proceedings or alternatively may by direction of the Minister be handed over to the requesting country on condition that it will be returned (*subsection (3)*). *Subsection (4)* provides a saver for the lawfully acquired rights of the State or any person in such property. Where such rights exist the property shall be handed over only on condition that it will be returned without charge as soon as may be after the trial of the person surrendered.

42. *Section 36* provides that a document supporting a request for extradition shall be received in evidence without further proof if it purports to be signed or certified by a judge, magistrate or officer of the requesting country and to be authenticated by the oath of some witness or by being sealed with the official seal of a minister of state of that country and that the courts shall take judicial notice of such official seal. The documents referred to are set out in *section 24* and are the following :—

- (a) The original or authenticated copy of the conviction and sentence or detention order immediately enforceable or, as the case may be, the warrant of arrest,
- (b) a statement of the offence,
- (c) a copy of the relevant enactments or statement of the relevant law, and
- (d) a description of the person claimed.

43. Article 6 (2) of the Convention provides that where a State does not extradite its national it shall, at the request of the requesting State, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. In many continental countries the State has jurisdiction over offences committed by its nationals even when committed outside the State. This is not the case here, although there are some exceptions to the rule. *Section 37 (1)* provides that where any Irish citizen does any act outside the State which constitutes an extraditable offence and for which he would be liable to be extradited but for the fact that

he is an Irish citizen he shall be guilty of the like offence within the State and liable on conviction to the like punishment as if the act were done within the State. No proceedings for an offence under this section may be taken except by direction of the Attorney General given after a request by the country in whose territory the act is alleged to have been committed (*subsection (2)*). The section applies only to acts committed after the commencement of the Act (*subsection (3)*). Any such act shall be deemed to have been committed in the Dublin Metropolitan District Court area. This is to give that court jurisdiction to deal with the case (*subsection (4)*).

44. *Section 38* embodies the rule of specialty in its application by the State (see *section 20* and Article 14 of the Convention).

45. *Section 39* is based on Article 21 of the Convention. It provides that transit through the State may be granted by the Minister on receipt of a formal request from the country to which an extradited person is being conveyed (*subsection (1)*). The person concerned will be in lawful custody while in the State (*subsection (2)*).

### PART III: ENDORSEMENT AND EXECUTION OF WARRANTS.

46. *Section 40* sets out the places in relation to which Part III applies, i.e. Northern Ireland, England, Wales, Scotland, the Isle of Man and the Channel Islands.

47. *Section 41* is a definition section. "Commissioner of the Garda Síochána" and "Commissioner" are defined as including a Deputy Commissioner and an Assistant Commissioner. "Offence" is defined as an act which is punishable by imprisonment for a maximum period of at least three months or by a more severe penalty (e.g., death). "Summons" is defined as including any citation or direction to a person to appear to answer to a complaint. "Citation" is the expression used in Scotland for a summons.

48. *Section 42*, which deals with the endorsement of warrants, provides for the backing of a British or Northern Ireland warrant by the Commissioner or one of the Deputy or Assistant Commissioners. The section applies to warrants for persons whether accused or already convicted (i.e. where they have been released on bail pending appeal or have escaped from custody). The form of authorisation to the Gardaí to execute the warrant is set out in *subsection (2)*. The section does not apply to warrants for imprisonment in default of payment of any sum of money, e.g., a fine, costs or compensation (*subsection (3)*).

49. *Section 43* deals with the execution of endorsed warrants. It provides that the arrested person is not to be handed into British or Northern police custody except at the point of departure from the State. It is provided also that any member of the relevant police force may take over the custody of the arrested person. *Subsection (2)* is new and provides that an arrested person is to be given a reasonable opportunity of consulting a solicitor if he desires to do so.

50. *Section 44* deals with the detention of persons arrested and provides that pending delivery into British or Northern police custody the person arrested may be detained in a Garda station for a period not exceeding forty-eight hours or in a prison or remand institution (if he is not more than twenty-one years of age) for a period not exceeding seven days unless a *habeas corpus* application to the High Court is pending or the Minister is considering representations made to him or that Court is considering a question referred to it by the Minister under *section 47*, in which event the person may be held until a decision is arrived at and for a reasonable time thereafter (to give time for an escort to come over and collect him). *Subsection (3)*

provides that the endorsed warrant will be sufficient authority for the detention of the person arrested in a prison or remand institution. This is to give the Governor or other person in charge formal authority for holding the arrested person in custody while awaiting the arrival of an escort or pending a decision on representations made to the Minister or an application to the Court. *Subsection (4)* corresponds to *section 28 (6)*—see *paragraph 33* of this memorandum.

51. *Section 45* empowers the Minister to direct that certain warrants shall not be endorsed. He may do so if he is of opinion that the offence to which a warrant relates is a political offence or an offence connected with a political offence, a purely military offence or a fiscal offence. He may also give a direction where he is of opinion that there are substantial grounds for believing that the person to whom the warrant relates will be prosecuted for a political offence or an offence connected with a political offence or an offence against military law which is not an offence under ordinary criminal law. Provision is also made for the Minister to refer to the High Court the question whether any of the grounds for non-endorsement apply in a particular case. "Political offence" does not include the killing or attempted killing of a Head of State or a member of his family (*section 3 (1)*).

52. *Section 46* contains special provisions restricting the execution of warrants for summary offences to cases where the defendants have had adequate notice of the court hearing at which they are to appear and have failed to do so. A summary offence for the purpose of this section includes an offence which is a summary offence and at the same time an indictable offence (*subsection (1)*). Accordingly it provides that a warrant issued in respect of a summary offence shall not be endorsed unless—

- (a) it is for the arrest of a person who has failed to appear before a court in pursuance of his recognizance, or
- (b) it is for the arrest of a person who has failed to appear before the court at the appropriate time and place having been served personally with a summons outside the State, or who fails to appear at an adjourned hearing, whether or not he was served personally with the summons, or
- (c) before the issue of the warrant a summons was issued and a notice of the issue of the summons containing a copy thereof was served on the person concerned personally by a member of the Garda Síochána at least fourteen days before the date named in the summons for his appearance (*subsection (2)*).

*Subsection (4)* sets out the documents which may be accepted by the Commissioner as evidence of the issue and service of a summons or of the appearance of a person before a court.

53. *Subsection (1)* of *section 47* provides for the release of a person arrested if the Minister or the High Court so directs on any of the grounds (political, etc.) specified in *section 45*. A direction of the Court under this section may be given in *habeas corpus* proceedings brought by or on behalf of the person arrested or upon the question being referred to the Court by the Minister (*subsection (2)*).

54. *Subsection (1)* of *section 48* deals with the verification of a warrant produced to the Commissioner. If the warrant is accompanied by an affidavit verifying the signature on the warrant he may without further evidence accept that the warrant was duly signed and issued in accordance with the law of the place concerned, that the offence for which the warrant is issued is an offence under that law and that the affidavit has been properly sworn. *Subsection (2)* indicates the evidence he may accept as to whether an offence

is summary or not and as to the punishment provided for it under British or Northern Ireland law.

55. *Section 49* provides for the admissibility of certain documents in evidence in court—normally the High Court. The documents are made evidence unless the Court “sees good reason to the contrary”. It is expected that in most cases the Court will accept the documents and that where it does not it will allow a reasonable time for the production of the usual proofs (*subsection (1)*). *Subsection (2)* provides that in any proceedings a warrant purporting to be endorsed by the Commissioner shall, unless the contrary is proved, be deemed to have been duly endorsed by him.

56. The provisions of the Indictable Offences Acts, 1848 and 1868, the Summary Jurisdiction Act, 1848, and Petty Sessions (Ir.) Act, 1851, which are being repealed are those authorising the backing and execution of British warrants in Ireland. The Extradition Acts, 1870 to 1906, are being repealed with the exception of section 24 of the 1870 Act and section 5 of the amending Act of 1873; these two sections are being retained as they provide for the taking of evidence of witnesses in relation to criminal proceedings in foreign courts. Section 27 of the Slave Trade Act, 1873, included offences against that Act in the list of offences which are extraditable under the Extradition Act, 1870. The Fugitive Offenders Acts, 1881 and 1915, which are also being repealed, provided for the return of fugitive offenders, from one part of the British Commonwealth to another.

*An Roinn Dlí agus Cirt*

*Nollaig, 1963*