



AN BILLE UM CHEARTAS COIRIÚIL (UIMH. 2), 1990
CRIMINAL JUSTICE (NO. 2) BILL, 1990

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

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Courts-Martial Appeals Act, 1983	1983, No. 19
Criminal Justice Act, 1951	1951, No. 2
Criminal Justice Act, 1960	1960, No. 27

Criminal Justice Act, 1964	1964, No. 5
Defence Act, 1954	1954, No. 18
Genocide Act, 1973	1973, No. 28
Offences against the Person Act, 1861	1861, c. 100
Offences against the State Act, 1939	1939, No. 13
Offences against the State (Amendment) Act, 1940	1940, No. 2
Piracy Act, 1837	1837, c. 88
Prisoners of War and Enemy Aliens Act, 1956	1956, No. 27
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Treason Act, 1939	1939, No. 10



AN BILLE UM CHEARTAS COIRIÚIL (UIMH. 2), 1990
CRIMINAL JUSTICE (NO. 2) BILL, 1990

BILL

entitled

5 AN ACT TO ABOLISH THE DEATH PENALTY AND SUB-
STITUTE IMPRISONMENT FOR LIFE, TO PROVIDE
THAT A MINIMUM PERIOD OF IMPRISONMENT SHALL
BE SERVED BY PERSONS CONVICTED OF TREASON
10 OR OF CERTAIN CATEGORIES OF MURDER OR
ATTEMPTS TO COMMIT ANY SUCH MURDER AND TO
PROVIDE FOR OTHER CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—No person shall suffer death for any offence.

Abolition of death
penalty.

15 2.—A person convicted of treason or murder shall be sentenced to
imprisonment for life.

Sentence for
treason and murder.

3.—(1) This section applies to—

Special provision in
relation to certain
murders and
attempts.

(a) murder of a member of the Garda Síochána acting in the
course of his duty,

(b) murder of a prison officer acting in the course of his duty,

20 (c) murder done in the course or furtherance of an offence under
section 6, 7, 8 or 9 of the Offences against the State Act,
1939, or in the course or furtherance of the activities of
an unlawful organisation within the meaning of section 18
(other than paragraph (f)) of that Act, and

25 (d) murder, committed within the State for a political motive,
of the head of a foreign State or of a member of the
government of, or a diplomatic officer of, a foreign State,

and to an attempt to commit any such murder.

30 (2) (a) Subject to *paragraph (b)*, murder to which this section
applies, and an attempt to commit such a murder, shall
be a distinct offence from murder and from an attempt to
commit murder and a person shall not be convicted of
murder to which this section applies or of an attempt to

commit such a murder unless it is proved that he knew of the existence of each ingredient of the offence specified in the relevant paragraph of *subsection (1)* or was reckless as to whether or not that ingredient existed.

- (b) Save as otherwise provided by this Act, the law and procedure relating to murder and an attempt to commit murder shall apply to the offence. 5

(3) In this section—

“diplomatic officer” means a member of the staff of a diplomatic mission of a foreign State having diplomatic rank; 10

“prison” means any place for which rules or regulations may be made under the Prisons Acts, 1826 to 1980, section 7 of the Offences against the State (Amendment) Act, 1940, section 233 of the Defence Act, 1954, section 2 of the Prisoners of War and Enemy Aliens Act, 1956, or section 13 of the Criminal Justice Act, 1960; 15

“prison officer” includes any member of the staff of a prison and any person having the custody of, or having duties in relation to the custody of, a person detained in a prison.

Minimum period of imprisonment for treason and murder, and attempts, to which *section 3* applies.

4.—Where a person (other than a child or young person) is convicted of treason or of a murder or attempt to commit a murder to which *section 3* applies, the court, in passing sentence, shall specify— 20

(a) in the case of treason or murder, a period of not less than forty years,

(b) in the case of an attempt to commit murder, a period of not less than twenty years, 25

as the minimum period of imprisonment to be served by that person.

Restrictions on power to commute or remit punishment or grant temporary release.

5.—(1) The power conferred by section 23 of the Criminal Justice Act, 1951, to commute or remit a punishment shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder to which *section 3* applies or an attempt to commit such a murder, be exercisable before the expiration of the minimum period specified by the court under *section 4* less any reduction of that period under *subsection (2)* of this section. 30

(2) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence passed on him on conviction of treason or of murder to which *section 3* applies or an attempt to commit such a murder as if he had been sentenced to a term of imprisonment equal to the minimum period specified by the court under *section 4*, and that period shall be reduced by the amount of any remission which he has so earned. 35 40

(3) Any power conferred by rules made under section 2 of the Criminal Justice Act, 1960, to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder to which *section 3* applies or an attempt to commit such a murder, be exercisable during the period for which the commutation or remission of his punishment is prohibited by *subsection (1)* of this section unless 45

for grave reasons of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by those reasons.

5 6.—(1) Where a person is accused of murder to which *section 3* applies or of any attempt to commit such a murder, he shall be charged in the indictment with murder to which that section applies or, as the case may be, with an attempt to commit such a murder.

Procedure in cases of murder, and attempts, to which *section 3* applies.

(2) A person indicted for murder to which *section 3* applies may—

- 10 (a) if the evidence does not warrant a conviction for such murder but warrants a conviction for murder, be found guilty of murder,
- (b) if the evidence does not warrant a conviction for murder but warrants a conviction for manslaughter, be found guilty of manslaughter.

15 (3) A person indicted for an attempt to commit a murder to which *section 3* applies may, if the evidence does not warrant a conviction for such an attempt but warrants a conviction for an attempt to commit murder, be found guilty of an attempt to commit murder.

7.—The enactments mentioned in the *First Schedule* are hereby amended in the manner specified therein.

Consequential amendments.

20 8.—(1) An offence of treason, capital murder or attempt to commit a capital murder, being an offence committed wholly or partly before the passing of this Act, shall be dealt with under the law in force before such passing, except that—

Transitional provisions.

25 (a) if the offender is convicted of treason or capital murder, he shall be sentenced as provided for by this Act as if, in the case of capital murder, the murder were murder to which *section 3* applies, and

30 (b) if he is convicted of attempted capital murder, he shall be sentenced as if he had been convicted of attempted murder.

35 (2) If, on an appeal against a conviction before the passing of this Act, of treason or capital murder the conviction is confirmed, the appeal court shall impose sentence as provided for by this Act as if, in the case of capital murder, the murder were murder to which *section 3* applies.

9.—(1) The enactments mentioned in the *Second Schedule* are hereby repealed to the extent specified therein.

Repeals.

40 (2) The repeal by this Act of section 1 of the Offences against the Person Act, 1861, shall not affect the operation of sections 64 to 68 of that Act.

10.—This Act may be cited as the Criminal Justice Act, 1990.

Short title.

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS

1. In section 2 of the Piracy Act, 1837, "and on conviction thereof shall be sentenced to imprisonment for life" shall be inserted at the end of the section. 5

2. Section 103 of the Children Act, 1908, shall have effect in relation to a child or young person who is convicted of an offence for which an adult would be required to be sentenced to imprisonment for life as it had effect before the passing of this Act in relation to a child or young person convicted of an offence for which an adult would have been required to be sentenced to death. 10

3. Section 1 of the Treason Act, 1939, shall be amended as follows:

(a) in subsections (1) and (2) "be sentenced on conviction thereof to imprisonment for life" shall be substituted for "be liable on conviction thereof to suffer death", and 15

(b) in subsection (3) "murder to which section 3 of the *Criminal Justice Act, 1990*, applies" shall be substituted for "capital murder" (inserted therein by the *Criminal Justice Act, 1964*).

4. The Defence Act, 1954, shall be amended as follows: 20

(a) in section 50 (2) "death," shall be deleted;

(b) in sections 124 and 125 "imprisonment for life" shall be substituted for "death";

(c) in section 126 (2) (iii) "for any term not exceeding two years" shall be inserted after "imprisonment"; 25

(d) in sections 127 and 128 "imprisonment for life" shall be substituted for "death";

(e) in sections 133, 134, 135 (1) (b), 136, 137 (1), 140, 141, 142 (b), 142A (1) (ii), 143, 144, 145, 146, 147, 148, 150, 152, 153, 156, 157, 159 (1), 160, 161 (2), 162, 163, 164 (1), 165, 166, 167 and 168 (1) "for any term not exceeding two years" shall be inserted after "imprisonment"; 30

(f) the following section shall be substituted for section 169:

"Offences
punishable
by ordinary
law.

169.—(1) Subject to the provisions of this Act, every person who, while he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law and, if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial. 35 40

(2) Where a person charged under this section is convicted by a court-martial of treason or murder, he shall be sentenced to imprisonment for life. 45

(3) Where a person charged under this section is convicted by a court-martial of an offence other than treason or murder, he shall be liable to be punished as follows:

(a) if he is convicted of manslaughter, be 50

liable to suffer penal servitude or any less punishment awardable by a court-martial;

5

(b) if he is convicted of rape, be liable to suffer penal servitude or any less punishment awardable by a court-martial;

(c) if he is convicted of an act of genocide which would be punishable under the Genocide Act, 1973, be liable—

10

(i) in case the offence consists of the killing of any person, to imprisonment for life, or

15

(ii) in any other case, to imprisonment for a term not exceeding fourteen years;

20

(d) if he is convicted of any offence not before in this section particularly specified which when committed in the State is punishable by the ordinary criminal law of the State, be liable, whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by law of the State or, if he is subject to military law as an officer, dismissal with ignominy from the Defence Forces or any less punishment awardable by a court-martial or, if he is subject to military law as a man, imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.”;

25

30

(g) the following section shall be inserted after section 169:

35

“Trial by court-martial of treason and certain murders and attempts.

40

169A.—(1) A person subject to military law who is accused of murder which is alleged to be murder to which *section 3* of the *Criminal Justice Act, 1990*, applies or of an attempt to commit such a murder and is to be tried by court-martial shall be charged with murder to which that section applies or, as the case may be, with an attempt to commit such a murder, and the following provisions of that Act, namely—

(a) *section 4*, with the substitution of ‘court-martial’ for ‘court’, and

45

(b) *subsection (2)* of *section 6*, with the substitution of ‘charged with’ for ‘indicted for’,

shall apply and have effect in relation to the trial.

50

(2) The said *section 4* shall apply and have effect, in relation to the trial of a person subject to military law who is accused of treason, with the substitution of ‘court-martial’ for ‘court’.”;

- (h) in section 192 (2) (d) "for any term not exceeding two years" shall be inserted after "imprisonment";
- (i) in section 198, subsection (2) shall be deleted;
- (j) in sections 209 (1) and 210 (1) "Imprisonment for life" shall be substituted for "Death"; 5
- (k) in section 210 (6) "imprisonment for life or" shall be inserted before "penal servitude" in each place where those words occur;
- (l) in subsections (7) and (10) of section 210 "for any term not exceeding two years" shall be inserted after "imprisonment"; 10
- (m) section 212 shall not apply to a sentence of imprisonment for life;
- (n) in section 220, subsection (2) shall be deleted and, in subsection (3), "imprisonment on conviction of treason or of murder, or attempted murder, to which *section 3* of the *Criminal Justice Act, 1990*, applies" shall be substituted for "death"; 15
- (o) in section 221 (1) "(other than a sentence of death)" shall be deleted and the following proviso added: 20

"Provided that—

- (i) the said power of mitigation or remission shall not, in the case of a sentence of imprisonment passed on a person on conviction of treason or of murder, or attempted murder, to which *section 3* of the *Criminal Justice Act, 1990*, applies, be exercisable before the expiration of the minimum period specified by the court-martial under *section 4* of that Act, as applied by *section 169A* of this Act, less any reduction of that period under *paragraph (ii)* of this proviso, and 25 30
- (ii) the rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence passed on him on conviction of treason or of murder, or attempted murder, to which the said *section 3* applies as if he had been sentenced to a term of imprisonment equal to the minimum period specified by the court-martial under the said *section 4*, as applied by *section 169A* of this Act, and that period shall be reduced by the amount of any remission which he has so earned."; 35 40
- (p) in section 222, paragraph (a) and "in any other case" in paragraph (b) shall be deleted;
- (q) the following subsection shall be added to section 223:
 - "(10) This section shall not apply to a sentence of imprisonment on conviction of treason or of murder, or attempted murder, to which *section 3* of the *Criminal Justice Act, 1990*, applies."; 45
- (r) section 227 shall be deleted;

(s) the following subsection shall be inserted in section 228 after subsection (1):

5 “(1A) Where a sentence of imprisonment for life is passed by a court-martial and confirmed, the military prisoner shall, as soon as practicable, be committed to a public prison to undergo his sentence according to law, and subsections (2) to (7) of this section shall have effect in relation to him—

10 (a) as if each reference therein to a military convict were a reference to a military prisoner and each reference to a penal servitude prison a reference to a public prison, and

15 (b) as if the reference in the said subsection (7) to penal servitude were a reference to imprisonment.”;

(t) section 229 shall not apply to a military prisoner sentenced to imprisonment for life; and

(u) the following subsection shall be inserted in section 233 after subsection (2):

20 “(2A) Any power conferred by rules under this section to release a person temporarily shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder, or attempted murder, to which section 3 of the *Criminal Justice Act, 1990*, applies, be exercisable during the period for which the power to mitigate or remit his punishment is prohibited by paragraph (i) of the proviso (inserted by that Act) to section 221 (1) of this Act unless for grave reasons of a humanitarian nature, and any such release shall be only of such limited duration as is justified by those reasons.”.

5. In the Courts-Martial Appeals Act, 1983—

35 (a) in sections 26, 28 (2) (c) and 28 (3) (ii) (I) “a capital offence or murder” shall be replaced in each case by “an offence for which a person would be required on conviction to be sentenced to imprisonment for life”;

40 (b) in section 27 (2) (c) “a capital charge or a charge of murder” shall be replaced by “a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life”.

SECOND SCHEDULE

Section 9.

ENACTMENTS REPEALED

Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)
C. 100.	Offences against the Person Act, 1861.	Sections 1 to 3. In section 71, the words “otherwise than with death”.

Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)
C. 24	Capital Punishment Amendment Act, 1868.	The whole Act.
C. 78.	Juries Procedure (Ireland) Act, 1876.	Section 13.
C. 49.	General Prisons (Ireland) Act, 1877.	Proviso in section 40.
No. 27 of 1926.	Court Officers Act, 1926.	Section 53.
No. 15 of 1928.	Courts of Justice Act, 1928.	In subsection (1) of section 6, the words "death or". Subsection (2) of section 6.
No. 2 of 1951.	Criminal Justice Act, 1951.	In subsection (1) of section 23, the words "Except in capital cases,".
No. 27 of 1956.	Prisoners of War and Enemy Aliens Act, 1956.	Subsection (1) of section 5.
No. 11 of 1962.	Geneva Conventions Act, 1962.	In subsection (1) (b) of section 6 and in subsection (1) of section 8, the words "to death or". In subsection (2) of section 8, the words "remains a sentence of death, or".
No. 5 of 1964.	Criminal Justice Act, 1964.	The whole Act, except sections 4 and 11.
No. 28 of 1973.	Genocide Act, 1973.	Section 4.
No. 14 of 1976.	Criminal Law (Jurisdiction) Act, 1976.	Subsection (6) of section 20.
No. 19 of 1983.	Courts-Martial Appeals Act, 1983.	Section 21.

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BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do chur deireadh le pionós an bháis agus do chur príosúnachta saoil ina ionad, dá fhoráil go ndéanfaidh daoine a chiontófar i dtréas nó i gcineálacha áirithe dúnmharaithe nó in iarrachtaí aon dúnmharú den sórt sin a dhéanamh fostréimhse príosúnachta a chur isteach, agus do dhéanamh socrú i dtaobh nithe eile a bhaineann leis na nithe sin.

An Act to abolish the death penalty and substitute imprisonment for life, to provide that a minimum period of imprisonment shall be served by persons convicted of treason or of certain categories of murder or attempts to commit any such murder and to provide for other connected matters.

*An tAire Dlí agus Cirt a thíolaic,
3 Aibreán, 1990*

*Presented by the Minister for Justice,
3rd April, 1990*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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