



EXTRADITION (EUROPEAN UNION CONVENTIONS) ACT, 2001

EXPLANATORY MEMORANDUM

[This memorandum is not part of the Act and does not purport to be a legal interpretation.]

Introduction

The purpose of the Act is to give effect to two European Union Conventions on Extradition (the 1995 and 1996 Conventions) by amending, inter alia, the Extradition Act, 1965 (hereinafter referred to as the Principal Act). The Act also makes some changes to our general extradition law.

The 1995 Convention on simplified extradition procedures between the Member States of the European Union provides for a simplified procedure where the person sought consents to his or her surrender — such consent to be given before the High Court which must be satisfied that the consent is given voluntarily and in full awareness of the consequences. Once consent is given and, where the person claimed is a citizen of Ireland, the Minister for Justice, Equality and Law Reform agrees, the person will be extradited.

A person who has consented to his or her surrender may also renounce his or her right to the Specialty Rule (the rule whereby a person extradited for one offence may not be tried for other offences committed before his or her extradition) — such renunciation to be recorded before the High Court. The consent of the Minister for Justice, Equality and Law Reform is also required.

The 1995 Convention provides that consent or renunciation may not be revoked but allows parties to opt out of this requirement by making a declaration to that effect on ratification. It is proposed that Ireland will make such a declaration, and the Act allows for revocation.

The 1996 Convention relating to extradition between the Member States of the European Union, as well as extending the range of extraditable offences, also provides for the improvement and simplification of procedures in a number of respects. The range of extraditable offences is being extended by lowering the threshold for extradition from 12 to six months imprisonment for the offence in the requested state (while remaining 12 months in the requesting state) (see *section 11*). Further, to be an extraditable offence, it will be sufficient that the offence is criminal here at the date of making of the extradition request — previously for an offence to be extraditable in Ireland it must have been an offence under our law both at

the time it was committed and when the request was received. Revenue offences are also being made extraditable (see *section 13*). These latter two changes will be of general application. The position in relation to political offences remains unchanged (see *section 12*). Extradition requests, documents and correspondence may be sent by facsimile transmission provided the facsimile machine is fitted with a cryptographic device to ensure authenticity and confidentiality. Changes are also made in relation to the authentication and certification of documents. The Convention also requires all states to designate a Central Authority to be responsible for transmitting and receiving extradition requests and supporting documentation, and it is proposed that the Minister for Justice, Equality and Law Reform will be the Central Authority for Ireland.

The Act also gives effect to changes in our general extradition law. As from the commencement of *section 20*, all extradition proceedings will be held in the High Court. Evidence may be given by a witness outside the State through a television link or by affidavit in any extradition proceedings. The Act also deals with other miscellaneous matters such as foreign seals, laying of orders before the Houses of the Oireachtas and the content of such orders.

Both Conventions to which the Act gives effect include a provision that the terms of the Conventions will not affect more favourable bilateral arrangements already in existence between any Member States. This means that, as far as implementation of the Conventions is involved, the Backing of Warrants procedure with the UK contained in Part III of the Principal Act will not be affected. However, the Act will bring about a number of changes in our extradition arrangements with the UK. For example, there is a new definition of correspondence to deal with difficulties that may arise because acts that constitute offences by the law of both States may be designated differently. It is now provided in effect that the offence in the State need not be in the same category or of the same description as the offence in the UK — offences correspond where the acts of the person sought would constitute an indictable offence if committed in Ireland or are punishable on summary conviction by at least six months imprisonment. Also, it will be sufficient that the offence is criminal here at the date of making of the extradition request. In addition, as the UK has already a provision in its legislation making revenue offences extraditable in the context of the Backing of Warrants arrangements with this country, this Act will do likewise.

The text of both EU Conventions, in Irish and in English, is attached to the Act as *Schedules 1* and *2*.

Provisions of Act

PART I (*Sections 1 — 2*)

PRELIMINARY AND GENERAL

This Part defines terms used in the Act and provides for other routine matters.

Section 1 (*Short title, collective citation, construction and commencement*)

Section 1 provides that the short title of the Act is the Extradition (European Union Conventions) Act, 2001. It also provides that the Act will come into operation by Ministerial Order and that different provisions of the Act may be brought into effect by different orders.

Section 2 (Interpretation)

Section 2 (1) is a standard provision which provides for the definition of certain terms used in the Act. *Subsection (2)* provides that the amendments effected by the Act apply to offences whenever committed. However, the Act does not affect cases already decided where extradition was sought but refused on the grounds that the offence in question was a revenue offence.

PART 2 (*Sections 3 — 8*)

CONVENTION OF 1995

This Part gives effect to the 1995 Convention on simplified extradition procedures between the Member States of the European Union. It deals with cases where persons whose extradition is sought consent to being handed over. The 1995 Convention does not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

Section 3 (Amendment of section 3 of Principal Act)

A new subsection (1A) is inserted into section 3 of the Principal Act; it defines “Convention country” for the purposes of amendments being made to the Principal Act by *Part 2* of this Act.

Section 4 (Convention countries)

This section provides that the Minister for Foreign Affairs may by order designate countries that have adopted the Convention of 1995. The 1995 Convention is a European Union Convention and open only to EU Member States.

Section 5 (Provisional arrest)

This section amends section 27 of the Principal Act by inserting new subsections (2A) and (2B). It implements Article 4 of the 1995 Convention and sets out the information that must be provided to enable the simplified procedure to go ahead. This information has to be communicated also to the arrested person who must also be informed of his or her right to consent to surrender.

Section 6 (Consent to surrender)

This section inserts a new section (section 29A) into the Principal Act. It provides that where a person in extradition proceedings is brought before the High Court under a provisional arrest warrant or under a warrant of arrest, he or she may consent to being surrendered to the Convention country concerned. The procedure is elaborated on in *subsections (2) to (4)* of the new section. Where the person claimed is a citizen of Ireland, the Minister for Justice, Equality and Law Reform has to consent as well (*subsections (2)(e) and (3)(f)*).

Subsection (5) of the new section provides that if a person who is provisionally arrested consents to his or her being surrendered, the Minister for Justice, Equality and Law Reform shall inform the Convention country concerned not later than 10 days after the person is so arrested. This is also a requirement where the person does not consent to being surrendered.

Subsection (6) of the new section provides that a person who has consented to his or her surrender may subsequently (but before the making of a surrender order by the Minister) withdraw such consent.

Subsection (7) of the new section provides that where a person, in respect of whom there is a provisional arrest warrant under section 27 of the Principal Act and who has been the subject of a committal order (by the High Court), withdraws his consent, he/she shall, after a request for his/her extradition (under section 26 of the Principal Act) has been received, be brought before the High Court and the court shall affirm the order of committal provided there has been compliance with the Act.

Section 6 also makes a technical amendment to section 14 of the Principal Act to take account of the new consent provisions.

Section 7 (Waiver of rule of specialty)

This section amends section 20 of the Principal Act and inserts a new section 20A. A person who has consented to his or her surrender may also waive his or her right to the specialty rule (which provides that a person extradited for one offence may not be tried for other offences committed before his or her extradition unless certain conditions are complied with). Subsection (1) of the new section 20A provides that a person who has consented to his surrender may also voluntarily, before the High Court, give his consent to the Minister consenting to the waiver of specialty in his case. Section 20A (2) provides that a person who has consented in accordance with subsection (1) may withdraw such consent; however, such withdrawal must take place before the giving of such consent by the Minister. Section 20A (3) provides that the Minister shall not give his consent prior to the day he makes an order for the surrender of the person under section 33 of the Principal Act.

Note: Under Article 7 of the 1995 Convention consent and renunciation of specialty must be given before the judicial authorities of the requested state as compared with Article 10 of the 1996 Convention (see section 15) which requires the waiver of specialty in the limited circumstances contemplated by Article 10 to be given after his or her surrender before the judicial authority of the requesting state.

Section 8 (Surrender)

This section provides for the insertion of a new section 33A in the Principal Act and sets out the procedure where consent to surrender has been given (Articles 10 and 11 of the 1995 Convention deal with surrender). The date of consent will be the date on which the consent is made and recorded before the High Court.

Subsection (1) of section 33A provides that where the High Court makes an order under section 29A, the Minister shall notify the requesting country of that decision within 20 days of its making and subsection (2) provides that the Minister shall make an order for the surrender of the person sought not later than 20 days after the giving of notification.

However, subsection (3) allows a derogation from the period mentioned in subsection (2) if surrender within the specified period has been prevented by circumstances beyond the control of the Minister. Subsection (4) of the new section provides for the person to be released if he or she has not been surrendered to the requesting State within the new timeframe agreed under section 33A (3).

The new section 33A (5) provides that the previous subsections shall not apply where the Minister proposes to postpone surrender of a person claimed in accordance with section 32 of the Principal Act.

Part 3 (*Sections 9 — 19*)

CONVENTION OF 1996

This Part gives effect to the 1996 Convention relating to extradition between Member States of the European Union. The purpose of this Convention is to improve judicial co-operation between the EU states in the extradition area by extending the range of extraditable offences and improving and simplifying procedures in a number of respects.

Section 9 (Amendment of section 3 of Principal Act)

A new subsection (1B) is inserted into section 3 of the Principal Act and defines “Convention country” for the purposes of amendments being made to the Principal Act by Part 3 of this Act.

Subsection (1C) is inserted into section 3 of the Principal Act and provides for a Central Authority. The Explanatory Report to the 1996 Convention dealing with the designation of a Central Authority by each Member State states that “the central authority will be a focal point for transmission and reception of extradition requests and necessary supporting documents.”

The existing provision for dealing with requests under Part II of the Principal Act is contained in *section 23* and it provides that a request for extradition of any person shall be made in writing and shall be communicated by (a) a diplomatic agent of the requesting country, accredited to the State, or (b) by any other means provided in the relevant extradition provisions.

Section 10 (Convention countries)

This section provides that the Minister for Foreign Affairs may by order designate countries that have adopted the Convention of 1996. The 1996 Convention is a European Union Convention and open only to EU Member States.

Section 11 (Extraditable offences)

This Section amends section 10 of the Principal Act by inserting new subsections (1A) and (1B) and gives effect to the reduction in the threshold for extradition as between contracting states provided for in Article 2 (1) of the 1996 Convention. It provides that offences will be extraditable if they are punishable by 6 months imprisonment in the requested Member State and 12 months in the requesting Member State. The previous general threshold was 12 months in *both* States (section 10(1) of the Principal Act and Article 2 of the 1957 European Convention on Extradition.).

It is also being provided that where extradition is granted for an offence that complies with the minimum sentence requirements (i.e. 12 months and 6 months in the requesting and requested state, respectively), extradition may also be granted for certain other offences (i.e. minor offences) that fail to comply with this requirement.

Section 11 (c) and *(d)* of the Act provide that, to constitute an extraditable offence, it will be sufficient for an offence to be criminal in this State at the date of making of the extradition request and in the requesting state at both the date of commission and request. However, if any part of the act constituting the extradition request was committed in this State, then it has to be an offence under the law of this State on the day on which it was committed. These provisions will ensure that no one can avoid extradition simply because

both states had not criminalised the offence in question at the time of its commission.

Section 12 (Political offences)

This section amends section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987. Article 5 of the 1996 Convention requires that, as between contracting countries, no offence may be regarded as a political offence but it allows Member States to confine this requirement to the offences referred to in Articles 1 and 2 of the Suppression of Terrorism Convention. It is proposed that Ireland, on ratification, will make a declaration to this effect, setting out the offences under our law that may not be political viz. the offences set out in section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987 and in the Schedule to the Extradition (Amendment) Act, 1994.

The position in Irish law in regard to the political offence exception is that since all of the EU States are parties to the Suppression of Terrorism Convention and orders applying Part II of the 1965 Act have been made in relation to all EU States, our 1987 Extradition (European Convention on the Suppression of Terrorism) Act, as amended by the Extradition (Amendment) Act, 1994, will apply (without more) to all EU States and there is, therefore, no need to include any “political offence” provision in the Act in relation to those States.

This section is included to cater for the possibility that post-enlargement new EU Member States may become parties to the 1996 Convention on Extradition between Member States of the European Union, although they may not be a party to the Convention on the Suppression of Terrorism.

Section 13 (Revenue offences)

This section gives effect to Article 6 of the 1996 Convention which makes revenue offences extraditable between EU states. Section 13 of the Principal Act contained an absolute bar on extradition for revenue offences. The amendments being made to the Principal Act by this provision will also enable simple amendments to be made to existing bi-lateral extradition agreements (e.g. USA and Australia) to provide for extradition for revenue offences, if that is so desired. It will also allow for extradition for revenue offences to be included in any future agreements that may be negotiated. The UK has already a provision in its legislation allowing for the possibility of extradition for revenue offences in the context of the Backing of Warrants arrangements with this country and the amendments in subparagraph (c) of the section will do likewise.

Also, *section 13 (a)* substitutes a new definition for the definition of revenue offences in section 3(1) of the Principal Act (inserted by section 3 (a) of the Extradition (Amendment) Act, 1994).

Section 14 (Pardon or Amnesty)

This section inserts a new section 18A in the Principal Act. It provides that extradition shall not be granted where the person claimed has (i) been granted a pardon under Article 13.6 of the Constitution, or (ii) become immune by virtue of any amnesty or pardon in accordance with the law of the requesting country, or (iii) by virtue of any Act of the Oireachtas, become immune from prosecution or punishment for the act for which extradition is sought.

The Explanatory Report to the 1996 Convention dealing with this matter states, inter alia, “This Article (Article 9) provides that an

amnesty declared in the requested Member State, in which that State had competence to prosecute the offence under its own criminal law, will constitute a mandatory reason for not granting extradition.”

Section 15 (Rule of Specialty)

This section amends section 20 of the Principal Act and further modifies the specialty rule with regard to extradition between Member States. A person extradited for one offence may be tried or prosecuted for other offences committed before his or her extradition if the offences do not give rise to imprisonment, or where imprisonment is involved, if the person has expressly waived the benefit of specialty, such waiver to be made before the competent judicial authorities of the requesting state and to be shown to have been made voluntarily and in full awareness of the consequences.

As indicated above, extradition to a Convention country of a person claimed shall not be refused on the grounds only that a person may (a) be prosecuted or tried for offences which are not punishable by deprivation of liberty, or (b) upon conviction be liable to a term of imprisonment and such other penalty as does not involve a restriction of his personal liberty, and the High Court is satisfied that the other penalty will only be imposed should he or she be convicted, or (c) be subjected to a penalty or measure not involving the deprivation of liberty, including a financial penalty or a measure in lieu thereof, even if failure or refusal to submit to any measure or comply with any such penalty may involve restriction of his or her personal liberty.

In relation to an offence where imprisonment is involved, the person may only be proceeded against if he or she has expressly waived the benefit of specialty after his or her surrender (before the competent judicial authority) and, in the case of an Irish citizen, the Minister also consents. Article 7(2) of the Convention provides that a Member State may declare that it will authorise extradition of its nationals only under certain specified conditions. Ireland’s declaration in this respect will provide for the need for such consent.

Section 16 (Application of rule of specialty in State)

This section amends section 39 of the Principal Act which deals with the application of the rule of specialty in the case of persons extradited to Ireland and contains analogous provisions to the previous section. Article 10 of the 1996 Convention provides that the consent of the requested state is not necessary in relation to those proceedings. Again a person has to expressly waive the benefit of specialty, such waiver to be made before a judge of the High Court, who has to be satisfied that the person consented voluntarily and in full awareness of the consequences.

Section 17 (Authentication)

Article 15 of the 1996 Convention, which deals with authentication, aims at simplifying the formal requirements in relation to documentation for extradition. The general principle established is that any document or copy thereof transmitted for the purposes of extradition (between Convention countries) shall be exempted from authentication or any other formality.

A new *subsection (2)* is being inserted into section 25 of the Principal Act and provides that for the purposes of an extradition request from a Convention country, a document shall be deemed to be an authenticated copy if it has been certified as a true copy by the judicial authority that issued the original or by an officer of the Central Authority duly authorised to do so.

A new section is also substituted for section 37 of the Principal Act. This imposes two distinct regimes, i.e. one for non-Convention countries (*subsection (1)*) and the other for Convention countries (*subsections (2) and (3)*).

The new *section 37(1)* provides that in relation to non-Convention countries a document supporting a request for extradition shall be received in evidence if it purports to be signed by a judge, magistrate or officer of the requesting country, and to be certified by being sealed with the seal of a minister of state, ministry, department of state or other such persons performing similar functions.

The new *section 37(2)* provides that a document purporting to be a copy of a document supporting a request for extradition from a Convention country shall, subject to *section 37(3)*, be received in evidence without further proof.

The new *section 37(3)* provides that a document that purports to be certified by the judicial authority in a Convention country that issued the original or by an officer of the Central Authority duly authorised to do so, to be a true copy of a conviction and sentence or of a warrant of arrest, shall be received in evidence without further proof, and where a seal of the relevant judicial authority or Central authority has been affixed to the document, judicial notice shall be taken of that seal.

Section 18 (Facsimile transmission of documents)

This section inserts a new section 23A in the Principal Act and gives effect to Article 13(3), (4) and (5) of the 1996 Convention. The Central Authority is given the authority to receive extradition requests and documents by fax. In order to guarantee the authenticity of extradition documents, the Central Authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals. To ensure confidentiality and authenticity use will be made of cryptographic devices. Where the Central Authority in the State is not satisfied that the documents correspond with the originals, it may require the Central Authority of the requesting country to provide the original document or a true copy thereof.

Section 19 (Transit)

This section amends section 40 of the Principal Act and gives effect to Article 16 of the 1996 Convention which deals with the transit of a surrendered persons through Ireland from one Contracting Party to another. Any request for transit by a Convention country must contain the information specified in new subsection (1A), viz. the person's identity, whether there exists an arrest warrant, the nature and description of the offence, a description of the circumstances in which the offence was committed, the date and place of its commission, etc.

A new subsection (2A) is inserted into section 40 to deal with the unscheduled landing of an aircraft in the State which has on board a person who is being conveyed to a Convention country upon his or her surrender to that country pursuant to extradition proceedings.

Part 4 (Sections 20 — 27)

MISCELLANEOUS PROVISIONS

This Part provides for a number of substantive and procedural changes to our general extradition law.

Section 20 (Proceedings under Principal Act to be heard before High Court)

All extradition proceedings are being moved to the High Court. This is a change from the present law where the initial application for the extradition of persons from the State is made to the District Court. Since a substantial number of extradition cases end up in the High Court in any event it is considered that the consolidation of all extradition proceedings in the High Court would provide for a more efficient and expeditious hearing of such cases. Since 1994 all bail applications in extradition cases must be taken in the High Court.

Section 20(1)(f) and *(g)* provide for a right of appeal on a point of law from the High Court to the Supreme Court.

Section 20(3) provides for transitional arrangements. It provides that the moving of all extradition proceedings to the High Court shall not operate to affect extradition proceedings brought before the commencement of this section. In particular, the District Court shall, in relation to any such proceedings, have the same jurisdiction that it had immediately before such commencement.

Section 21 (Laying of orders before Houses of Oireachtas)

This section amends section 4 of the Principal Act. The effect of this section is to revert to the original requirement in the Principal Act which provided that Government Orders entered into force when they were made but were then laid before each House of the Oireachtas which could annul them if a resolution to that effect was passed within 21 days.

Section 22 (Evidence by affidavit)

This section inserts a new section 7B into the Principal Act and provides that evidence as to any matter to which proceedings under that Act relate may be given by affidavit, or by a statement in writing that purports to have been sworn by the deponent in a place other than the State and in the presence of a person duly authorised to attest to the swearing of such a statement by the deponent. The High Court may, if it considers that the interests of justice so require, direct that oral evidence be given of the matters described in the affidavit or statement.

Section 23 (Amendment of section 8 of Principal Act)

This section amends section 8 of the Principal Act — it inserts a new subsection (1A) and substitutes new subsections (3), 3(A) and 3(B) for the present subsection (3). It also makes a technical amendment to subsection (8). The purpose of the changes is to deal with difficulties that have arisen in practice from the present wording of section 8. For example, the existing section has been interpreted as requiring that every order made must embody the terms of the extradition agreement. Thus, as is most often the case, if the purpose of the order is merely to apply Part II to a new state on the accession of that state to (say) the 1957 Convention, the text of the Convention is set out in the order despite the fact that the text will be available in the previous order which will be referred to in the new order and cited together with it.

The amendments to the section propose that when an extradition agreement is made with another state or states the text of the agreement will be included but that when Part II is applied to a new state on the accession of that state to an existing agreement, the text of the agreement will not be included in the order. However, the order will recite or embody the terms of any reservation or declaration entered to that agreement by the country to which the order applies.

When an amendment to an existing agreement is made the order need only contain the text of the amendment.

The previous subsection (8) of section 8 of the Principal Act requires the publication in *Iris Oifigiúil* of the text of the orders made. The new subsection (8) requires that in future it will be sufficient to give notice in *Iris Oifigiúil* that the order has been made.

Overall these changes will mean a more streamlined and efficient procedure than has existed heretofore.

Section 24 (Evidence through television link by person outside State)

This section amends section 29 of the Criminal Evidence Act, 1992 to provide for the possibility of a person, other than the person whose extradition is being sought, being able to give evidence from abroad in extradition cases via live television link. Leave of the court will be needed.

Section 25 (Foreign seals)

Paragraph (a) of section 21(3) of the Principal Act is substituted to take account of the fact that some countries do not have ministerial seals and seal documents under the seal of a Ministry or Department. It is now provided that a seal of the relevant Minister, Ministry or Department is sufficient. This amendment also requires a consequential amendment to section 39(2) of the Principal Act and this is provided for in paragraph (b) of the section.

Section 26 (Corresponding offence)

This section deals with any difficulty that may arise with ‘correspondence of offences’ in Part III cases, i.e. the Backing of Warrants arrangements with the UK. It provides that correspondence exists where the act constituting the offence in the UK would, if done in the State, constitute an offence under the law of the State, being an offence which is punishable on indictment or punishable on summary conviction by imprisonment for a maximum term of not less than 6 months. This definition will mean that while the offence in the State may not be in the same category or of the same description as the offence in the UK, it will still be extraditable provided the act constituting the offence would, if done in the State, constitute an offence of the above gravity here.

This section also provides (in relation to the UK) that, to constitute an extraditable offence, it will be sufficient for an offence to be criminal here at the date of making of the extradition request and a crime in the UK at both the date of commission and request. However, if any part of the act constituting the extradition request was committed in this State, then it has to be an offence under the law of this State on the day on which it was committed. This provision is similar to that contained in *section 11* of the Act which applies to Part II countries.

Section 27 (Amendment of section 3 of Act of 1987)

This section amends section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987.

The four Geneva Conventions of 1949 are being added to the list in section 3 (a) of the Extradition (European Convention on the Suppression of Terrorism) Act 1987. This is being done to ensure that the political offence exemption will not arise in cases involving offences under these Conventions. The Conventions in question have been given effect in Ireland by the Geneva Conventions Act 1962.

As the 1962 Act does not make specific provision in relation to extradition, this amendment is being made to remove any doubt there might be about the possibility of the political offence exemption being relied upon in Ireland in the case of offences under these Conventions.

*Department of Justice, Equality and Law Reform,
December, 2001.*