



**AN BILLE UM CHEARTAS COIRIÚIL (CÚNAMH
FRITHPHÁIRTEACH) 2005**
CRIMINAL JUSTICE (MUTUAL ASSISTANCE) BILL 2005

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The purpose of the Bill is threefold:

- (a) to give effect to provisions in seven mutual legal assistance instruments, viz.:
- the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union done at Brussels on 29 May 2000 [the 2000 Convention];
 - the Protocol to that Convention done at Luxembourg on 16 October 2001 [the 2001 Protocol];
 - the Agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto [Agreement with Iceland and Norway];
 - the Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence [the Framework Decision];
 - the Second Additional Protocol of 8 November 2001 to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 [the Second Additional Protocol to the European Convention];
 - Articles 49 (excluding paragraph (a) which has been repealed) and 51 of the Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 [the Schengen Convention];
 - the mutual legal assistance aspects of the Council Decision concerning the signature of an Agreement between the European Union and the United States of America on Extradition and Mutual Legal Assistance in Criminal Matters done at Brussels on 6 June, 2003 [the EU-US Agreement];
- (b) to provide for certain amendments to the Criminal Justice Act, 1994, and

- (c) to transpose the Criminal Justice Act 1994 (Section 46(6)) Regulations, 1996 into primary legislation.

The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union supplements and builds on the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters by developing and modernising existing provisions governing mutual assistance between member states of the EU.

The Protocol to the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union provides for mutual assistance in relation to requests for information on bank accounts and banking transactions. Provision is also made for monitoring of banking transactions.

The Agreement between the EU and the Republic of Iceland and Kingdom of Norway extends the provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto to those states.

The Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence establishes the rules under which a member state of the EU shall recognise and execute in its territory a freezing order issued by a judicial authority of another member state in the framework of criminal proceedings.

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters improves and supplements the provisions of the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters and its additional Protocol.

The Agreement between the European Union and the United States of America on Extradition and Mutual Legal Assistance in Criminal Matters improves, supplements and facilitates further co-operation between the countries in relation to both mutual legal assistance and extradition.

Overview

Part 1 is introductory and sets out some general matters in relation to the provision of mutual legal assistance.

Part 2 deals with the provision of information and monitoring arrangements in relation to financial transactions. The main purpose of this Part is to set out the procedures for giving effect to the provisions in the 2001 Protocol in relation to financial transactions for criminal investigation purposes.

Part 3 deals with the provision of assistance between member states of the EU in relation to the interception of telecommunications for criminal investigation purposes. This Part gives effect to Articles 17 to 22 of the 2000 Convention.

The purpose of Part 4 is to give effect to the Council Framework Decision of 22 July 2003 on the execution in the EU of orders freezing property or evidence.

Part 5 deals with the enforcement of confiscation and forfeiture orders.

Part 6 deals with the provision of evidence. Provision is made for the transfer of prisoners to give evidence to assist in criminal investigations and for evidence to be given by television and telephone link. Obtaining identification evidence for criminal investigations both inside and outside the State is also provided for in this Part.

Part 7 deals with other forms of assistance. These forms of assistance include the service of documents, a legal basis for the restitution of articles obtained by criminal means to their rightful owners and provision for controlled deliveries both in the State and in other EU and Council of Europe member states.

Part 8 deals with mutual assistance in criminal matters between the State and the United States of America.

A range of miscellaneous matters, including standard provisions, are provided for in Part 9 of the Bill.

Provisions of the Bill

PART 1: PRELIMINARY AND GENERAL

Section 1: Short title and commencement

Subsection (1) provides for the short title of the Bill.

Subsection (2) provides that the Bill will come into operation by Ministerial Order and that different provisions of the Bill may be brought into effect by different orders on such day or days as the Minister may appoint.

Section 2: Interpretation (general)

This section provides for the definition of certain terms and words used in the Bill.

Section 3: General restriction on providing assistance

This section sets out the grounds under which mutual assistance will be refused.

Subsection (1) provides that assistance will be refused where the Minister considers that granting the assistance would be likely to prejudice the sovereignty, security or other interests of the State or would be contrary to public policy. Assistance will also be refused where there are reasonable grounds for believing that the request was made for the purpose of prosecuting or punishing a person on the basis of his or her sex, race, religion, ethnic origin, nationality, political opinion or sexual orientation or where a person's position may be prejudiced for any of these reasons. If there are reasonable grounds for believing that providing the assistance may result in a person being subjected to torture or that it would otherwise contravene the European Convention on Human Rights, assistance will be refused. Furthermore, it will be refused if it would prejudice a criminal investigation or criminal proceedings in the State.

Subsection (2) defines the term "torture" in the context of this section.

Section 4: Designated state

This section provides for the Minister for Foreign Affairs to designate a state other than a member state (which is defined in section 2) for the purposes of this Act or parts of this Act. Provision is also made to amend or revoke such an order.

Section 5: Certain Articles of 2000 Convention and Second Protocol to have force of law

This section provides for certain provisions in the 2000 Convention and the Second Additional Protocol to have the force of law in the State.

Subsection (1) provides that Articles 4 and 6 of the 2000 Convention — relating to formalities and procedures in the execution of requests and to the transmission of requests — have the force of law in the State. It also provides that Articles 4 and 8 of the Second Additional Protocol — relating to channels of communication and procedure — have the force of law in the State.

Subsection (2) is a technical provision, clarifying the meaning of the terminology used in the Articles referred to in subsection (1). References to a requested state or requested party or to authorities, judicial authorities or competent authorities of that state or party is to be interpreted as referring, where appropriate, to the Central Authority or a judge or court. References to the Articles in subsection (1) means that any declarations or reservations made in relation to those Articles are applicable.

Section 6: Requests (general)

The main purpose of this section is to set out procedural matters in relation to requests for mutual legal assistance.

Subsection (1) provides that the procedures and formalities to be applied in dealing with requests for mutual legal assistance, including transmission of requests, are those laid out in the relevant international instrument. *Subsection (2)* provides that the Bill will apply only to requests made after the relevant international instrument has entered into force or has been applied between Ireland and the relevant designated state. *Subsection (3)* specifies that a request must be addressed to the Central Authority in the State (unless the relevant international instrument provides otherwise) and that it must be in writing or in a form capable of producing a written record. *Subsections (4)* and *(5)* provide for the translation, where appropriate, of requests and related or supporting documentation which issues from or is received by the State. *Subsection (6)* provides that the Central Authority may accept requests and any supporting or related documents as evidence of the matters mentioned in them unless it has information to the contrary. The Central Authority may seek additional information from the authority from whom the request is received if this is necessary to enable a decision to be made on the request. *Subsection (7)* specifies that the Minister may postpone action on a request where proceeding with the request might prejudice criminal proceedings or a criminal investigation. In accordance with *subsection (8)*, before deciding to refuse or postpone a request, the Minister will consult the authority from whom the request is received for the purpose of considering whether the request may be granted in part or subject to conditions. In accordance with *subsection (9)*, reasons must be given for any postponement or refusal of a request. *Subsection (10)* provides that the Minister must inform an authority from whom a request is received if it is not possible to comply with the request or if a significant delay in complying with the request is likely.

Section 7: Transmission of evidence to designated state (general)

Subsection (1) provides that evidence obtained in compliance with a request must be transmitted to the requesting state as directed by the Minister. In accordance with *subsection (2)*, the judge or member of the Garda Síochána concerned will supply any certificate, affidavit

or other verifying document for transmission with the evidence referred to in subsection (1). *Subsection (3)* provides that, where the evidence consists of documentation, either the original or a copy shall be transmitted and where the evidence consists of any other item, either the item itself or a description, photograph or representation of it will be transmitted.

Section 8: Central Authority

Subsection (1) specifies that the Minister for Justice, Equality and Law Reform is the Central Authority. *Subsection (2)* describes the functions of the Central Authority as receiving, transmitting and dealing with requests received under the terms of the Bill, with the exception of requests in relation to the interception of telecommunications messages. *Subsections (3), (4)* and *(5)* provide for the possibility of designation by the Minister of a person or persons to perform specified functions of the Central Authority, and for a subsequent amendment or revocation of that designation. Such persons will be recognised as acting for the Central Authority in performing the functions designated. *Subsection (6)* provides that the Minister will inform the General Secretariat of the Council of the European Union of the names of any persons designated under this section.

Section 9: Spontaneous exchange of information

This section gives effect to Article 7 of the 2000 Convention and Article 11 of the Second Additional Protocol.

Subsection (1) makes provision for the Director of Public Prosecutions or the Commissioner of the Garda Síochána to exchange information relating to criminal matters with the competent authority in a designated state. The information may be exchanged without receiving a request to that effect. In accordance with *subsection (2)*, conditions may be imposed by the Director of Public Prosecutions or the Commissioner of the Garda Síochána on the use of such information. Under *subsection (3)*, conditions may not be applied to the use of the information communicated to a designated state which has made a declaration under Article 11.4 of the Second Additional Protocol unless the designated state knows in advance the nature of the information and has agreed to its being communicated. Competent authority is defined at *subsection (5)* as meaning the authority in the designated state appearing to the Director or Commissioner to be the appropriate authority to receive or communicate the information concerned.

Section 9: Repeals

This section provides for the repeal of listed provisions of the Criminal Justice Act, 1994 and amendments thereto.

PART 2

INFORMATION ABOUT FINANCIAL TRANSACTIONS FOR CRIMINAL INVESTIGATION PURPOSES

This Part gives effect to the provisions in the 2001 Protocol, which makes provision for the sharing of information and monitoring of banking transactions for criminal investigation purposes.

Section 11: Interpretation (Part 2)

This section contains definitions of certain terms used within this Part.

Information about financial transactions for use in the State

Sections 12 and 13 deal with obtaining information about financial transactions for the purpose of a criminal investigation in the State.

Section 12: Account information order and account monitoring order

Subsection (1) provides that a member of the Garda Síochána not below the rank of inspector may apply *ex parte* to a judge of the District Court for an account information order and/or an account monitoring order for the purposes of a criminal investigation in the State. *Subsection (2)* sets out the institutions to which such an application may relate. *Subsection (3)* specifies the conditions to be satisfied if the order sought is to be granted. The judge must be satisfied that the Garda Síochána is investigating whether a specified person has committed an offence or possesses or controls assets or proceeds deriving from criminal conduct. The judge must also be satisfied that there are reasonable grounds for believing that the specified financial institution(s) may have information required for the purposes of the investigation and that it is in the public interest that such information be disclosed. *Subsection (4)* provides that sufficient information must be provided to enable the account to be identified by the financial institution concerned. *Subsection (5)* provides that an order made under this section has effect as if it were an order of the District Court and notwithstanding any obligation which may arise with regard to secrecy or restrictions on disclosure imposed by statute or otherwise. *Subsection (6)* permits the making of a District Court order under this section notwithstanding that the financial institution to which the order relates is not in the district court district where the judge concerned is assigned. *Subsection (7)* provides an indemnity to financial institution(s) with regard to information provided in compliance with a District Court order under this section. The indemnity will not however apply in relation to proceedings where the financial institution(s) concerned makes a statement which it knows to be false or misleading or recklessly makes a statement which is false or misleading.

Section 13: Request to member state for information about financial transactions

Subsection (1) provides that the Director of Public Prosecutions may send an account information or account monitoring order which relates to an account or accounts in a financial institution in a member state to the Central Authority for transmission to the competent authority in the state concerned along with a request for the relevant information to be supplied. *Subsection (2)* provides that, notwithstanding the provisions in subsection (1), the Director of Public Prosecutions may make a request directly to the competent authority of a member state requesting information relating to an account information or account monitoring order. A request may be made if the Director has reasonable grounds for believing that the financial institution(s) in the member state may have information required for the purposes of the investigation and that it is in the public interest that such information be disclosed. *Subsection (3)* sets out the information to be provided by the Director when making such a request. *Subsection (4)* provides that the information obtained will not be used for any purpose other than that set out in the request. *Subsection (5)* provides for the return of the information provided when it is no longer required unless it has been specified that it is not necessary to return the information.

Information about financial transactions for use in member state

Section 14: Request from member state for information about financial transactions

This section deals with requests for information in relation to any account(s) that may be held in the State by a person who is the subject of a criminal investigation in another member state. *Subsection (2)* sets out the details that must be provided when a member

state requests information relating to an account or accounts. *Subsection (3)* defines “information” as used in this section.

Section 15: Action on request

This section provides that the Minister may, on receiving a request from a member state that complies with the criteria set out in section 14, authorise a member of the Garda Síochána not below the rank of inspector to apply to a judge of the District Court for an account information and/or account monitoring order.

Section 16: Account information order and account monitoring order on foot of request

Subsection (1) provides that, on receipt of authorisation under section 15, a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an account information and/or account monitoring order. *Subsection (2)* sets out the financial institutions to which such an application may relate and provides that a copy of the request and supporting documentation must accompany the application. *Subsection (3)* specifies the conditions under which the judge may make the order or orders. The order will be made if the judge is satisfied that an offence under the law of the member state has been committed, that the person concerned is the subject of an investigation into the offence, that the request is in accordance with the 2001 Protocol and that there are reasonable grounds for believing that the specified financial institution(s) may have information required for the purposes of the investigation. *Subsection (4)* provides that an account information or account monitoring order will contain sufficient information to enable it to be identified by the relevant financial institution. *Subsections (5), (6) and (7)* are a replica of the provisions in subsections 12(5), (6) and (7).

Section 17: Transmission of information obtained to requesting authority

This section provides for the transmission to the requesting authority of any information provided by a financial institution in compliance with an account information or account monitoring order.

Section 18: Requesting authority to be informed of possible further investigations

This section gives effect to Article 5 of the 2001 Protocol. Provision is made for the Commissioner of the Garda Síochána to inform the requesting authority that it may be appropriate to undertake investigations which were not initially foreseen when the request for an account information or an account monitoring order was made.

Section 19: Variation or discharge of account information or account monitoring order

In accordance with *subsection (1)*, a judge of the District Court may amend or terminate an account information or account monitoring order on foot of an application to the Court by either a member of the Garda Síochána not below the rank of inspector or by the financial institution affected. Under *subsection (2)*, if the application relates to an order made following the request of a member state, the judge shall ensure that the member state concerned is informed of the applications and the grounds for the application, in order that it may submit arguments if it wishes, and also of the outcome of the application. *Subsection (3)* provides that the application shall not be heard in public.

Section 20: Non-compliance with account information order or account monitoring order

This section provides at *subsection (1)* that if a financial institution does not comply with an account information or account monitoring order without good reason it is guilty of an offence. A financial institution is also guilty of an offence if, while appearing to comply with the order, it either makes a statement which it knows to be false or misleading in a matter of significance or if it makes such a statement through carelessness. Under *subsection (2)* a penalty of a fine not exceeding €5,000 will apply on summary conviction and a fine will also apply on conviction on indictment.

PART 3

INTERCEPTION OF TELECOMMUNICATIONS MESSAGES

Introductory

Articles 17 to 22 of the 2000 Convention make provision for the interception of telecommunications.

Section 21: Interpretation (Part 3)

This section contains definitions of certain terms used in this Part.

Sections 22 to 24 inclusive deal with interception of telecommunications where technical assistance is required from a member state.

Section 22: Request to member state for interception

Subsection (1) sets out the circumstances in which a request may be made to another member state for the interception of telecommunications. An application may be made where the Minister has given an authorisation for an interception to be made under section 2 of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993, where the person specified in the authorisation is present in this State or in a member state and where technical assistance is needed from a member state to perform the interception. In accordance with *subsection (2)*, the Minister may cause an application to be made to the relevant authority in a member state for the interception and immediate transmission to the Garda Síochána of telecommunications messages to or from the telecommunications address concerned or for the interception and recording of the messages and the transmission of the recording to the Garda Síochána. *Subsection (3)* specifies the information to be provided when a request is made to a member state for interception. This provision gives effect to Articles 18.3 and 4 of the 2000 Convention. *Subsection (4)* provides that if the request relates to a person who is present in the territory of a third member state, that state must be notified of the authorisation of the interception. *Subsection (5)* provides that any information received is subject to the Official Secrets Act, 1963. *Subsection (6)* provides, for the purposes of clarification, that an authorisation under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 may be made where the person whose messages are to be intercepted is present in a member state.

Section 23: Request to State for interception

Section 23 deals with requests to Ireland from other member states.

In accordance with *subsection (1)* a request may be made to the State for interception where a criminal investigation is underway in a member state; a lawful interception order or warrant has been issued in the member state; a request is made to the Minister for the

interception and immediate transmission of telecommunications messages to or from the telecommunications address concerned or for the interception and recording of the messages and the transmission of the recording to the relevant authority; and where the specified person is present in any member state and the State's assistance to intercept is required, or where s/he is present in the State and interception can take place within the State. *Subsections (2) and (3)* set out information that must be included when a request is made to the State for an interception. The information is that specified in Articles 18.3 and 4 of the 2000 Convention.

Section 24: Action on request

Subsection (1) provides that where the State receives a request for the interception and immediate transmission of specified telecommunications messages, the Minister may authorise the interception if the terms of section 23 are complied with and are relevant to the application. *Subsection (2)* provides that the Minister may authorise interception, if section 23 is complied with and relevant to the application, where the request is for the interception and recording of specific telecommunications messages and immediate transmission of the interception is not possible. *Subsection (3)* provides that, in relation to cases falling within the terms of subsections (1) and (2), where the person whose communications are to be intercepted is present in the State, the Minister may only authorise interception where the conduct under investigation would, if occurring in the State, constitute a serious offence and would justify the making of an interception authorisation. *Subsection (4)* gives effect to Articles 18.6 and 7 of the 2000 Convention. The State may make a declaration under Article 18.7 of the 2000 Convention at the time of entry into force of the Convention to the effect that immediate transmission of interceptions is not possible. In those circumstances the State will comply with requests for the interception, recording and subsequent transmission of telecommunications on being provided with the information set out in Articles 18.3 and 18.4 of the 2000 Convention, if such requests would be granted under section 2 of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993. *Subsection (5)* provides that the Minister may make authorisation of the interception if the person is present in the State subject to conditions that would be applied under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993. *Subsection (6)* provides for the Commissioner of the Garda Síochána to transmit the telecommunications messages or to arrange for the recording and subsequent transmission of the messages following the granting of an interception request. Under *subsection (7)* a request for a transcript of a recording may be made. The granting of any such request may be subject to any of the conditions which would apply to the authorisation of an interception. *Subsection (8)* provides that any authorisation made under these provisions has effect as if it were an authorisation under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 and the Postal and Telecommunications Services Act, 1983.

Sections 25 and 26 deal with interceptions where technical assistance from a member state is not required

Section 25: Notification to member state of interception

Subsection (1) provides that where the Minister has authorised an interception and the telecommunications address of the person concerned is being used in a member state and technical assistance of that state is not required to intercept, the member state will be notified by the Minister, as soon as the State becomes aware of the fact, that the person concerned is in that territory. *Subsection (2)* sets out the information to be provided when a notification under subsection

(1) is being made. *Subsection (3)* provides that the Minister will comply with any condition, requirement or request in relation to a request made under Article 20.4 of the 2000 Convention. *Subsection (4)* provides that, while the authority of the member state is considering whether to consent to the interception, any interception already made may be continued. However, any material already intercepted may not be used unless agreed with the other member state or for the purpose of taking urgent measures to prevent an immediate and serious threat to public security. *Subsection (5)* defines “serious offence” as used in subsection (4). *Subsection (6)* provides that a summary of the case and any further relevant information must be provided to the member state by the Minister, if requested, to enable a decision to be made concerning interception. In accordance with *subsection (7)* the information provided under subsection (6) is without prejudice to a member state’s decision in relation to consent to interception. *Subsection (8)* provides for the information in relation to interception set out in subsection (2), if of a particularly sensitive nature, to be transmitted through a specific person or body. *Subsection (9)* provides that this section does not apply where a member state has declared that it does not require the information, in line with the provisions in Article 20 of the 2000 Convention.

Section 26: Notification by member state of interception

Subsection (1) provides that this section applies when interception has been authorised in a member state, the telecommunications address of the person concerned is being used in this State, technical assistance from the State is not required in order to intercept and the competent authority of the member state notifies the Minister to this effect in accordance with Article 20 of the 2000 Convention. *Subsection (2)* provides that the Minister shall make a decision on the grant or disallowance, continuation or termination of interception within the time frames specified in subsection (7). A decision will also be necessary in relation to the use of information already intercepted. Under *subsection (3)*, the request for an authorisation shall be granted or the authorisation shall be continued if it would be given domestically under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993. *Subsection (4)* provides that the Minister will require that an interception will not be carried out or that it will be terminated if such a request would not be granted in a domestic context. The reasons for such a request will be provided in writing. Under *subsection (5)*, where a request is refused or terminated, any material already intercepted may not be used, or if it is to be used this may only be done in specified conditions. The justification for any such conditions will be communicated by the Minister in writing. *Subsection (6)* provides that the Minister may ask the requesting state to provide a summary of the facts of the case and any further information s/he considers necessary to decide whether an interception would be granted in a similar domestic context. *Subsection (7)* sets out the time limits to apply to requests which fall within the terms of subsections (3), (4) and (5). In accordance with *subsection (8)*, the Minister must notify the relevant member state of the reasons why an extension of the periods specified in subsection (7) is required. *Subsection (9)* provides that the Official Secrets Act, 1963 applies to any information provided under this section.

Miscellaneous

Section 27: Indirect interception of telecommunications messages

Subsection (1) defines “authorised undertaking”. *Subsection (2)* provides that where a person is present in the State, authorisation for interception has been given but the messages cannot be directly

intercepted in the State and the authorised undertaking is obliged to facilitate interception and can in this instance facilitate interception by accessing equipment in a member state, the authorised undertaking shall facilitate the interception. *Subsection (3)* provides that where the person concerned is present in a member state, a lawful warrant or order for interception has been made for the purposes of a criminal investigation but the messages cannot be directly intercepted in the member state and an authorised undertaking in this State is obliged to facilitate interception and can in this instance directly intercept and has equipment that can enable a telecommunications provider in the member state to intercept, then the authorised undertaking shall facilitate the interception of the messages.

Section 28: Amendment of section 110 of Act of 1983

This section amends the Postal and Telecommunications Services Act, 1983 by the insertion of a provision for fines for non-compliance. Authorised undertakings who are obliged to comply with requests to facilitate interception and who do not do so, without reasonable excuse, will be subject to a fine of €5,000 on summary conviction and an unlimited fine on indictment.

PART 4

FREEZING ORDERS

Introductory

Part 4 of the Bill gives effect to the Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

Section 29: Interpretation (Part 4)

This section provides definitions of certain terms used in this Part.

Section 30: Freezing order relating to evidence

Subsection (1) provides that the section applies where a criminal investigation or criminal proceedings are underway in the State. *Subsection (2)* allows for an application to be made by the Director of Public Prosecutions or a member of the Garda Síochána not below the rank of inspector to the High Court *ex parte* for a freezing order preventing, *inter alia*, the destruction, disposal or transfer of property that could be evidence. *Subsection (3)* lays down the conditions under which the judge may make the order. *Subsection (4)* provides that an order under this section has the effect of an order of the High Court. *Subsection (5)* provides for the High Court to amend or terminate a freezing order on application by a member of the Garda Síochána not below the rank of inspector or by any person affected by the order. *Subsection (6)* provides that, where an order requiring enforcement in a member state is amended or terminated, the High Court shall so inform the Central Authority who shall notify the member state concerned.

Freezing order for enforcement outside State

Section 31: Transmission of freezing order, with certificate, to member state for enforcement

The purpose of this section is to give effect to Articles 4 and 9 of the Framework Decision in the context of freezing orders to be enforced outside the State.

This section provides at *subsection (1)* that where a freezing order is made concerning property in a member state, a certificate may be completed by the court on application. *Subsection (2)* provides for translation of the freezing order and certificate where appropriate.

Subsection (3) provides that the certificate must be signed on behalf of the court and include a statement regarding the accuracy of the information therein. *Subsection (4)* provides that where the order relates to the protection of evidence, the member state concerned may be informed of any procedures or formalities to be adhered to in order to ensure that the evidence is admissible in criminal proceedings. *Subsection (5)* provides that the freezing order and certificate must be sent by the court to the Central Authority, who will transmit them to the relevant authority in the member state concerned for the purpose of enforcement.

External freezing orders for enforcement in State

Section 32: Transmission of external freezing orders to State

The purpose of this section is also to give effect to Articles 4 and 9 of the Framework Decision in the context of freezing orders to be enforced in the State.

This section provides at *subsection (1)* that a freezing order and a completed certificate certified as accurate, together with a request and any instruction regarding the treatment of the evidence or property concerned, shall be transmitted to the Central Authority for enforcement. In accordance with Article 4.2 of the Framework Decision, Ireland may modify or withdraw any declaration made to the Secretariat General of the Council in relation to transmission via its Central Authority. *Subsection (2)* specifies that the freezing order and certificate must be translated into English or Irish, if they are not already in either of those languages. *Subsections (3)* and *(4)* provide that the documents referred to in *subsection (1)* must be transmitted in a format capable of producing a written record and allowing for their authentication, including in facsimile. *Subsection (5)* provides for the original documents or a true copy to be transmitted in an agreed manner should the Central Authority or the court not be satisfied with a facsimile copy. *Subsection (6)* provides for the Minister to make regulations regarding procedures to be followed and the features to be present in equipment being used to transmit documents.

Section 33: Recognition and enforcement of external freezing orders

Subsection (1) provides for the Central Authority, on receipt of an external freezing order and related documents, to cause an application to be made to the High Court for a freezing co-operation order. Such an order would recognise the freezing order made by the member state and provide for a prohibition on the destruction, transfer, disposal etc. of property specified in the order. *Subsection (2)* provides for the application to be made *ex parte* and for it to be accompanied by the original freezing order and any related documents. *Subsection (3)* provides that the application will be dealt with as soon as possible and where practicable within 24 hours of receipt of the freezing order and certificate. *Subsections (4)* and *(5)* provide for the making of a freezing co-operation order which has the same effect as an order made under section 24 of the Criminal Justice Act, 1994, as amended by section 84(a) of this Act. *Subsection (6)* provides that an order may be refused if any of the grounds in section 3 (which sets out when assistance may be refused) or section 36 (which deals with the circumstances in which such orders may be refused) apply. In accordance with *subsection (7)*, a freezing order may not be refused solely on the basis that the offences encompassed by Article 3.2 of the Framework Decision are not offences under Irish law. *Subsection (8)* provides for formalities and procedures to be laid down in freezing orders for the protection of evidence in order to ensure the preservation and admissibility of such evidence. This will be done where indicated by the issuing authority, unless to

do so would be contrary to the fundamental principles of the law of the State. *Subsection (9)* provides for notice to be given to any person who appears to be affected by the freezing order unless the court is satisfied that it cannot ascertain the person's whereabouts.

Section 34: Duration of freezing co-operation order

This section sets out the circumstances in which the freezing co-operation order remains in force. In accordance with *subsection (a)* the order will remain in force until the relevant evidence is obtained and transferred or until such a request is refused. *Subsection (b)* provides that the order will remain in force, where it is related to confiscation, until a confiscation co-operation order has been made or refused and the refusal upheld on appeal. Under *subsection (c)* the order also remains in force until it has been varied or discharged in accordance with section 35.

Section 35: Variation or discharge of freezing co-operation order

Subsections (1) and *(2)* allow the High Court, on application which is without suspensive effect, to amend or terminate a freezing co-operation order. Termination will arise where proceedings for the offence or an application to transfer the evidence or a confiscation order is not made within what the Court considers a reasonable time. The order will also be terminated if the Court considers it would not be in the interests of justice to continue it. *Subsection (3)* provides that the substantive grounds for the making of the freezing order may only be reviewed by a judicial authority in the issuing member state. *Subsection (4)* provides that the Court must inform the issuing authority in the member state of an application by a person affected by an order and the grounds for the making of the application in order that the issuing authority may submit arguments at the hearing. The member state concerned must be informed of the outcome of the application.

Section 36: Refusal to make freezing co-operation order

The purpose of this section is to give effect to Article 7 of the Framework Decision.

The grounds on which the High Court may refuse to make a freezing co-operation order are set out in *subsection (1)*. They are: where the offence named in the freezing order is not an offence under this Part of the Act; where there is no certificate or the certificate is incomplete or does not correspond to the freezing order; where immunity or privilege makes it impossible to make the order and where it is clear that compliance with the order would infringe the *ne bis in idem* principle. *Subsection (2)* provides that where a certificate is absent, incomplete or clearly does not correspond to the freezing order, the Court may specify a deadline for a completed or corrected version to be submitted, or, at its discretion, accept an alternative or choose not to require a certificate. *Subsection (3)* provides that where the freezing co-operation order is refused by the High Court or it is not possible to make the order because the evidence or property has disappeared or been destroyed or cannot be located, the Central Authority will inform the issuing judicial authority accordingly, on instructions from the Court and by means of a written record.

Section 37: Postponement of freezing co-operation order

The purpose of this section is to give effect to Article 8 of the Framework Decision.

Subsection (1) provides for grounds on which the making of a freezing co-operation order may be postponed by the High Court. They are *(a)* where its making might damage an ongoing criminal investigation; *(b)* where the property or evidence is already subject

to a freezing order in the State or (c) where the order freezing property, with a view to its confiscation at a later stage, is subject to an order in relation to other proceedings in the State. In accordance with *subsection (2)*, postponement may only apply under *subsection (1)(c)* where the order made has priority over a subsequent freezing order in criminal proceedings. *Subsection (3)* provides that where the ground for postponement no longer applies that the freezing cooperation order will be made by the Court. *Subsection (4)* provides for the High Court to direct the Central Authority to inform the issuing member state of any postponement and the details of that postponement, of the making of a freezing co-operation order under *subsection (3)* and of any other measure which may apply to the property concerned.

Section 38: Subsequent treatment of frozen property

This provision gives effect to Article 10 of the Framework Decision.

Subsection (1) provides that a request to transfer evidence subject to a freezing co-operation order to the issuing member state will be dealt with in the same manner as a request for particular evidence for use outside the State in accordance with Section 60. *Subsection (2)* specifies that a request to make a property confiscation co-operation order under *subsection (1)* will be dealt with under Part 5 of the Bill. *Subsection (3)* provides that, notwithstanding the provisions in *subsection (1)*, a request for the transfer of evidence cannot be refused on the basis of the absence of dual criminality if the request is in relation to one of the listed offences in Article 3(2) of the Framework Decision and is punishable in the issuing member state by a prison sentence of at least three years.

PART 5

ORDERS FOR CONFISCATION AND FORFEITURE

Section 39: Definitions (Part 5)

This section provides definitions of certain terms used in this Part.

Enforcement of confiscation orders outside State

Section 40: Request for confiscation of property in designated state

Subsection (1) provides that where a confiscation order is made relating to property in a designated state, the court shall on request provide the Director of Public Prosecutions with an authenticated copy of the order and a certificate. The certificate must detail whether the order is subject to appeal and if so when the time for lodging an appeal shall expire, that the defendant was represented or appeared, and if not the date of the proceedings and the date the defendant received notice of the proceedings. A brief description of the conduct leading to the making of the order is also required. *Subsection (2)* provides that the Director of Public Prosecutions may send the documents referred to in *subsection (1)* to the Central Authority for transmission to the relevant state, along with a statement signed by or on behalf of the Director that the order is in force and has not been satisfied and a request that the confiscation order be applied. *Subsection (3)* provides that if property is realised on foot of a request under this section and the amount received is less than or equal to the amount ordered to be paid under the confiscation order, then this amount is subtracted from the total due, or the order is considered to be discharged, if appropriate. *Subsection (4)* provides that a certificate from the relevant authority in the designated state stating that realisation has taken place, the date of realisation and the proceeds of realisation is admissible as evidence without

further proof. *Subsection (5)* provides for an exchange rate to be applied at the euro equivalent to proceeds of realisation if they are stated in the certificate in subsection (4) other than in euro. The rate applicable will be that prevailing on the date of realisation of the order.

Enforcement of external confiscation orders in State

Section 41: Transmission to State of external confiscation order

Subsection (1) provides that an external confiscation order may be transmitted to the Central Authority in the State for enforcement by or on behalf of the court that made it. *Subsection (2)* sets out what must accompany the order. A statement must be provided by or on behalf of the court to the effect that the order is in force and not subject to appeal. A statement is also necessary to the effect that if the person did not appear in the proceedings, s/he received notice of them in person in sufficient time to enable his or her defence. A brief description of the conduct which constituted the offence resulting in the confiscation order must accompany the confiscation order.

Section 42: Confiscation co-operation order

Subsection (1) provides that the Central Authority in the State may cause an application to be made to the High Court, on receipt of an external confiscation order, for a confiscation co-operation order in order to effect the confiscation. In accordance with *subsection (2)*, the application must be accompanied by the external confiscation order and any related documentation. *Subsection (3)* provides for the Court to make a confiscation co-operation order on receipt of an application. *Subsection (4)* provides that the confiscation co-operation order may not be made unless the Court is satisfied (i) that the application is made with the Minister's consent, (ii) with the statements provided by the issuing state and (iii) that any person claiming to own or have an interest in the property concerned has been given an opportunity to make representations as to why the order should not be made. *Subsection (5)* provides that where a confiscation co-operation order provides for the confiscation of a sum of money it has effect as if the original confiscation order applied. The provisions in relation to the enforcement of confiscation orders as set out in sections 19 to 30 (excluding section 23) of the Criminal Justice Act, 1994 apply in relation to such orders.

Subsection (6) sets out the power of the Court where the confiscation co-operation order provides for the confiscation of property other than money. In accordance with *subsection (a)*, the Court may appoint a receiver and empower him or her to take possession of the property, subject to conditions as appropriate. Any person having control or possession of the property may be ordered by the Court to give possession to the receiver who may be empowered to receive it. The Court may also make a restraint order in relation to the property under section 24 of the Criminal Justice Act, 1994 and may make any other provisions that the interests of justice require. In accordance with *subsection (b)* the property is deemed to be realisable. In accordance with *subsection (c)*, the Court may order any person holding an interest in the property to make payment to the receiver. Recipients of any gift may be ordered by the Court to transfer, grant or extinguish their interest in such property. Sections 22 and 26 to 30 of the Criminal Justice Act, 1994, as modified in any respect, apply to the confiscation co-operation order as if it were a confiscation order. These provisions deal with the application of the proceeds of realisation, the exercise of powers conferred by the High Court or on the receiver and the winding up of a company holding realisable property. The subsection further provides that any person holding an interest in the property must be allowed to make representations

to the Court before any of the powers conferred within the specified subparagraphs of subsection (6) are exercised. *Subsection (7)* provides for an exchange rate to be applied at the euro equivalent to a confiscation order not expressed in euro. The rate applicable will be that prevailing on the date of the making of the order. *Subsection (8)(a)* provides that the Court may vary or discharge a confiscation co-operation order if such an application is received either from the person claiming to have an interest in the property or from anyone affected by the order. The court from whom the external confiscation order was received may be consulted in relation to such an application. In accordance with *subsection 8(b)* the Court will vary the order in line with any similar variation made to the external confiscation order. The Court will discharge an order if it satisfied that the external confiscation order has been revoked or has been discharged in accordance with the law of the state from which it was received.

Enforcement of forfeiture orders outside State

Section 43: Forfeiture of property in designated state

Subsection (1) provides that if an order made relates to the forfeiture of property in a designated state, the court shall on request supply the Director of Public Prosecutions with (i) an authenticated copy of the order; (ii) a certificate stating whether the order is subject to appeal and if so when the time for lodging an appeal will expire; (iii) that the defendant was represented or appeared, and if not, the date of the proceedings and the date the defendant received notice of the proceedings; and (iv) a description of the conduct constituting the offence which resulted in the making of the order. *Subsection (2)* provides that the Director of Public Prosecutions may send the documents referred to in subsection (1) and a request for the forfeiture of the property to the Central Authority for transmission to the state concerned.

Enforcement of external forfeiture orders in State

Section 44: Transmission to State of external forfeiture order

Subsection (1) provides that a forfeiture order made by another state may be transmitted to the Central Authority for enforcement. *Subsection (2)* specifies that the order must be accompanied by the following statements: (i) the order is in force and not subject to appeal; (ii) if the person concerned did not appear in the proceedings, that s/he received notice of the proceedings in sufficient time to defend them and (iii) a description of the conduct constituting the offence which resulted in the making of the order.

Section 45: Forfeiture co-operation order

Subsection (1) provides that on receipt of an external forfeiture order and supporting documents, the Central Authority may cause an application to be made to the High Court for a forfeiture co-operation order to be made in order to enable the forfeiture of the relevant property to take place. In accordance with *subsection (2)* the application must be accompanied by the external forfeiture order and any supporting documentation. *Subsection (3)* provides for the making of a forfeiture cooperation order on receipt of an application, subject to the conditions in subsection (4) being satisfied. *Subsection (4)* provides that the order may not be made unless the Court is satisfied that the application is made with the consent of the Minister, with the information provided by the issuing state (as set out in section 44(2)(a)) and that any person claiming to own or have interest in the property has been given an opportunity to make representations as to why the order should not be made. *Subsection (5)* provides that a forfeiture co-operation order deprives the subject of the proceedings of any right or interest in the property concerned

and vests the property in the Commissioner of the Garda Síochána. *Subsection (6)* provides for the disposal of the property for the benefit of the Exchequer. *Subsection (7)* provides for the amendment or termination of the forfeiture co-operation order if such an application is made by any person claiming to own or have an interest in the property. *Subsections (8), (9) and (10)* provide that the Police Property Act, 1897 does not apply to property under this section, that this section does apply to property in possession of the Garda Síochána under section 61(4) of the Criminal Justice Act, 1994 and that this section does not affect any enactment where property is forfeited as the result of a conviction.

PART 6

PROVISION OF EVIDENCE

Section 46: Interpretation (Part 6)

This section contains definitions of certain terms used within this Part.

CHAPTER 1

Taking of evidence

Section 47: Evidence from person in designated state

This section provides a procedure for obtaining evidence abroad for the purpose of criminal proceedings or a criminal investigation in the State. It is based on provisions contained in section 52 of the Criminal Justice Act 1994.

Subsection (1) provides that, where it appears to a judge of any court that a criminal investigation or criminal proceedings are underway, a letter of request may be issued seeking assistance in having specified evidence taken in a designated state for use in the proceedings or investigation. *Subsection (2)* provides that either the Director of Public Prosecutions or a person charged in criminal proceedings may apply for a letter of request. *Subsection (3)* provides that the letter of request will be sent to the Central Authority for transmission to the appropriate authority. *Subsection (4)* provides that, notwithstanding the provisions in subsections (1) to (3), the Director of Public Prosecutions may transmit a letter of request directly. *Subsection (5)* sets out what must be included in such a request. The request shall include a statement that the evidence is needed in criminal proceedings or a criminal investigation, a description of the conduct concerned, and any other available information that may assist in complying with the request. *Subsections (6) and (7)* provide that evidence obtained under this section must only be used for the purpose specified in the request unless the relevant authority consents otherwise and provide for the return of the evidence when it is no longer required, unless the contrary is specified. *Subsections (8) and (9)* provide that a statement of evidence of a witness taken in accordance with a request and certified on behalf of the appropriate authority is admissible in proceedings and is to be considered accurate and that a document purporting to be a certificate, signed by or on behalf of the relevant court, tribunal or authority, is to be accepted as certification, unless the contrary is shown. *Subsection (10)* relates to the general discretion of criminal courts to exclude evidence which is otherwise admissible. It provides that in considering whether to exclude evidence obtained on foot of a letter of request, a court must examine whether the law of the other country allowed the person to be legally represented and cross-examined when the evidence was being taken and also other factors which may differ in relation to the taking of such evidence from those which would apply in this country in similar proceedings. *Subsection (11)*

makes provision for the Director of Public Prosecutions to issue a letter of request to obtain evidence for criminal proceedings or a criminal investigation where such evidence will be given by a witness in the proceedings or any proceedings instituted after the relevant investigation has taken place *Subsection (12)* defines the term “appropriate authority” as used in this section.

Section 48: Evidence for use in designated state

This section, which is based on section 51 of the Criminal Justice Act, 1994, provides for the taking of evidence in the State for use in criminal proceedings or a criminal investigation in another country.

Subsection (1) provides that this section applies, subject to section 49, to the taking of evidence in the State from a witness on foot of a request for assistance from a designated state for the purpose of a criminal investigation or criminal proceedings. *Subsection (2)* provides that on receipt of a request for assistance the Minister may request the President of the District Court to nominate a judge of the District Court to receive the evidence and send him or her a copy of the request and any related documents. Under *subsection (3)* an assurance must be received from the requesting authority that any evidence supplied will only be used for the purpose permitted by the relevant international instrument unless the nominated judge or the witness agrees otherwise. *Subsection (4)* provides that the nominated judge has the power of the District Court in criminal proceedings and that s/he may direct that the evidence not be heard in public to protect either a person or information. The judge is obliged to inform the witness of his or her rights in relation to privilege as set out in section 49. *Subsection (5)* provides for the giving of evidence by means of a television link. *Subsection (6)* provides for penalties for the non-compliance of a person summoned to give evidence. The penalty is €2,500 or imprisonment for a period not exceeding six months or both on summary conviction if a reasonable excuse cannot be made. *Subsection (7)* clarifies that the Bankers’ Books Evidence Act, 1879 applies to proceedings in this section and *subsection (8)* prohibits any order for costs in proceedings under this section.

Section 49: Privilege of witnesses

Subsection (1) provides that a person cannot be compelled to give any evidence in proceedings under section 48 which she or he could not be compelled to give in criminal proceedings in this State or in the state seeking the evidence. *Subsection (2)* provides that the privilege of not being compelled to give evidence in criminal proceedings in another country does not apply once the requesting authority concedes the claim of the person to be exempt in that country. *Subsection (3)* provides that should the claim for privilege not be conceded, the person may be required to give evidence, but if a court in the state concerned upholds the claim, the evidence cannot be sent to the requesting authority. *Subsection (4)* provides that, without prejudice to the provisions in subsection (1), a person cannot be compelled to give evidence under this section in his or her capacity as a civil or public servant or if to do so might prejudice national security. *Subsection (5)* provides that a certificate signed by or on behalf of the Minister stating that the giving of evidence would be prejudicial to the security of the State is admissible as proof of that fact. *Subsection (6)* clarifies the meaning of references to giving evidence as used in this section.

Section 50: Transfer of prisoner to give evidence or assist criminal investigation in State

The provisions in this section are based on section 54 of the Criminal Justice Act, 1994. They have been amended to take account of the provision in Article 9 of the 2000 Convention (which deals with the temporary transfer of persons held in custody for the purposes of an investigation) and Article 13 of the Second Additional Protocol (dealing with the temporary transfer of detained persons to the requested party).

Subsection (1) defines the term prisoner as used in this section. *Subsection (2)* empowers the Minister, at the request of the Director of Public Prosecutions or a person charged in proceedings encompassed by this subsection, to issue a warrant for a prisoner to be transferred to the State. Such a warrant may be issued where a witness order or summons has been issued in criminal proceedings in respect of a prisoner or where it appears to the Minister desirable that the prisoner assist by his or her presence or be identified in the proceedings. *Subsection (3)* provides that no warrant shall be issued unless the prisoner consents in writing to be transferred. Under *subsection (4)*, the warrant will be transmitted to and from the relevant Central Authority with the request for the transfer of the prisoner. *Subsection (5)* provides that the warrant will constitute the necessary authority for the transfer, reception, detention and return of the prisoner. *Subsections (6) and (7)* provide that a prisoner is deemed to be in lawful custody while in the State and that he or she may be arrested without warrant should he or she escape. *Subsection (8)* allows for a person other than a member of the Garda Síochána to have custody of a prisoner under this section and to be deemed a member for the purposes of this section. *Subsection (9)* provides that certain legal provisions relating to non-nationals within the State do not apply to a prisoner under this section unless the warrant ceases to have effect while the prisoner is in the State. *Subsection (10)* provides that a prisoner who is transferred to the State under this section may not be prosecuted or otherwise restricted in respect of his or her personal freedom in respect of any offence which was committed before his or her arrival in the State.

Section 51: Transfer of prisoner to give evidence or assist investigation outside State

Broadly similar provisions feature in section 53 of the Criminal Justice Act, 1994. Amendments have been made to take account of Article 9 of the 2000 Convention and Article 13 of the Second Additional Protocol.

Subsections (1) and (2) provide that, on receipt of a request, the Minister may issue a warrant for a prisoner to be transferred to another country to give evidence, assist in or be identified in a criminal investigation or criminal proceedings in that state, provided that the prisoner gives written consent to being transferred. *Subsection (3)* provides that where in the Minister's view it is inappropriate for the prisoner to act for himself or herself, consent must be given by an appropriate person on the prisoner's behalf. *Subsection (4)* provides that the warrant will constitute the necessary authority for the handing over, detention and return of the prisoner in due course to continue serving his or her sentence. *Subsection (5)* provides that a warrant will not be issued under this section unless the requesting state is in a position to give an assurance that if the prisoner is transferred there he or she will not be prosecuted, sentenced, detained or otherwise restricted in his or her personal freedom for any offence

against the law of that state committed before the prisoner's departure from the State. *Subsection (6)* provides that a period spent in custody under the warrant forms part of the overall period of detention or imprisonment served by the prisoner. *Subsections (7) and (8)* provide that a prisoner is deemed to be in lawful custody while being taken to or from a prison under the warrant and that he or she may be arrested without warrant should he or she escape. *Subsection (9)* allows for a person other than a member of the Garda Síochána to have custody of a prisoner under this section and to be deemed a member for the purposes of this section.

Evidence through television link

Section 52: Evidence through television link for use in State

The purpose of this provision is to give effect to Article 10 of the 2000 Convention (hearing by videoconference) and similar provisions in Article 9 of the Second Additional Protocol.

Subsection (1) provides that this section applies where criminal proceedings have been instigated in the State against a person, a witness is in a designated state and it is not desirable or possible for the witness to give evidence in person. Under *subsection (2)* the Director of Public Prosecutions or the accused may apply to a judge to issue a letter of request for television link facilities to be provided in the other country in order that evidence may be provided via a television link. *Subsection (3)* provides that the application may be granted if the judge is satisfied that it is not desirable or possible for the person to give evidence in person. *Subsection (4)* sets out the information to be provided in the document which issues with the letter of request. *Subsection (5)* provides for transmission of the request by the Central Authority to a court, tribunal or other appropriate authority. Under *subsection (6)* the name of the judge conducting the hearing shall be communicated by the Central Authority as soon as it becomes available, if it is not known at the time of the issue of the letter of request to provide television link facilities. *Subsection (7)* allows for the accused to examine the witness at the hearing. *Subsections (8) and (9)* provide that evidence given through a live television link must be video recorded and that the videorecording or an edited version of it is admissible at the trial of the offence, unless the trial judge considers that its admissibility would be prejudicial to the interests of justice. Under *subsection (10)*, provisions of relevant international instruments covered by this Bill but which are not incorporated in this section concerning hearings via live television link have effect in the State in relation to a hearing under this section. *Subsection (11)* makes provision for penalties to apply in the event that a person giving evidence knowingly makes a false statement which is material to the proceedings. A fine not exceeding €2,500 or imprisonment for a period of not in excess of six months or both will apply on summary conviction. A fine not exceeding €10,000 or imprisonment for a period of not more than five years or both will apply on conviction on indictment. Under *subsection (12)* proceedings for an offence encompassed by *subsection (11)* will be treated as having been committed in the State. *Subsection (13)* defines "videorecording" as used in this section.

Section 53: Request for evidence through television link for use outside State

Subsection (1) provides that this section applies when a request is received for a person present in the State to give evidence through a television link in criminal proceedings in a designated state. *Subsection (2)* sets out the information to be included when such a request is made.

Section 54: Action on request

This section provides that if the Minister is of the view that it is not desirable or possible for the witness to give evidence in person and that the request is in accordance with section 53, s/he may request the President of the District Court to nominate a District Court judge who will summon the witness to attend to give evidence via television link.

Section 55: Taking of the evidence

Subsection (1) provides that District Court judge nominated under section 54 shall summon the witness to give evidence through a television link within the district to which the judge is assigned. *Subsection (2)* provides that the judge has the powers which apply in the District Court in relation to criminal proceedings for the purpose of complying with the request. *Subsection (3)* provides that the evidence must be given in accordance with the laws and procedures of the requesting state insofar as they are compatible with the fundamental principles of the law of this country. *Subsection (4)* provides that the witness may not be compelled to give evidence which s/he could not be compelled to give in criminal proceedings in the State or in the state seeking the evidence. *Subsection (5)* provides for the evidence to be taken in private if this is deemed necessary for the protection of witnesses and the state requesting the evidence agrees. *Subsection (6)* provides for the proceedings to be conducted by or under the direction of the judge of the requesting state in line with the laws of that state. In accordance with *subsection (7)* the nominated judge is obliged to take action to ensure that the evidence is taken in accordance with the law of the State. *Subsection (8)* provides for interpretation where necessary. *Subsection (9)* provides for a record of the evidence taken to be sent to the Minister for transmission to the requesting state and sets out what must be included in that record. *Subsection (10)* provides for penalties in the event a witness fails to testify when under an obligation to do so or where a witness knowingly makes a false statement material to the proceedings.

Evidence by telephone link for use outside State

Section 56: Request for evidence by telephone link

Both this section and section 57 give effect to Article 11 of the 2000 Convention and Article 10 of the Second Additional Protocol.

Subsection (1) provides for a request to be made for a witness present in the State to give evidence by telephone in criminal proceedings in a designated state. *Subsection (2)* sets out the information to be included in such a request.

Section 57: Taking of evidence

This section provides at *subsection (1)* that, if of the view that the witness is willing to give evidence by telephone link, the Minister may request that a judge of the District Court be nominated by the President of that Court to summon the witness to attend to give such evidence. *Subsection (2)* allows for the witness to confirm that s/he is willing to give evidence by telephone link. *Subsection (3)* states that provisions as set out in section 55 apply in relation to the taking of evidence under this section.

Section 58: Search for evidence at place in designated state

The provisions in this section are based on those contained in section 52 of the Criminal Justice Act 1994.

Under *subsection (1)*, a judge may issue a letter to another state requesting assistance in obtaining evidence where it appears to him or her that criminal proceedings have commenced or a criminal

investigation is underway in another state and where pertinent evidence may be obtained in that state. *Subsection (2)* provides that the Director of Public Prosecutions or a person charged in the proceedings referred to in subsection (1) may apply for a letter of request. *Subsections (3) and (4)* provide for the transmission of the letter of request to the relevant authority and for the Director of Public Prosecutions to issue the letter of request directly in certain specified circumstances. *Subsection (5)* specifies the information to be included in the letter of request. *Subsection (6)* provides that any evidence obtained by virtue of this section will not be used other than for the purpose specified in the request unless the consent of the relevant authority is obtained. In accordance with *subsection (7)* any evidence no longer required must be returned to the appropriate authority from which it was obtained, unless the authority indicates otherwise. *Subsection (8)* defines “appropriate authority” as used in this section.

Section 59: Search for evidence for use outside State (general)

Subsection (1) provides that this section applies to a request from a designated state for assistance in obtaining evidence for the purposes of a criminal investigation or criminal proceedings in that state where a search power exists domestically in relation to the conduct giving rise to the offence. *Subsection (2)* limits the application of the section to (a) cases where the offence is punishable under both the law of the State and that of the member state by imprisonment for at least six months, or (b) cases where the offence is punishable under Irish law by at least six months’ imprisonment and where it is being prosecuted in the member state by administrative authorities, whose decision may give rise to criminal proceedings. *Subsection (3)* provides that the section does not apply to a request from a designated state other than a member state unless dual criminality applies. Under *subsection (4)* the Minister may send the request and any related documents to the Commissioner of the Garda Síochána to arrange for the request to be complied with. *Subsection (5)* provides that the Minister may not send the request to the Commissioner of the Garda Síochána for execution unless the requesting authority gives an assurance that any evidence supplied will not be used for a purpose other than that specified in the request without the Minister’s consent and that the evidence will be returned when no longer required unless the Minister indicates otherwise. *Subsection (6)* provides that either the consent of the occupier or a warrant is required for a member of the Garda Síochána to enter a place in furtherance of a request. *Subsection (7)* provides that unless the evidence sought is already in the possession of the Garda Síochána, a search warrant must be applied for by a member of the Garda Síochána of at least the rank of inspector. *Subsection (8)* sets out the requirements to be met in order for a judge to issue a search warrant. They are that the request is one related to this section; that entry to a place is necessary to execute the request and that the owner has either not consented to the entry or is unlikely to consent, and seeking his or her consent might seriously prejudice compliance with the request. *Subsection (9)* lists the provisions of a warrant. The warrant will authorise a named member of the Garda Síochána, accompanied by other Gardaí or persons the member considers necessary, to enter a named place at any time within one week of the warrant’s issue; reasonable force may be used; the place and any person there may be searched; material found on the premises or on any person present on the premises at the time of the search may be examined, taken away and retained, if the member believes it may be evidence or relate to the offence concerned or be assets or proceeds deriving from criminal conduct; any document may be copied and taken away and any appropriate steps to prevent interference with any material may be taken. *Subsection (10)* provides that any material required that is

non-legible must be produced in legible format. *Subsection (11)* clarifies that documents subject to legal privilege are exempt from the provisions of the warrant but that other obligations with respect to secrecy under law do not affect a warrant issued under this section. *Subsection (12)* provides that a member of the Garda Síochána acting under a warrant issued under this section may require the name and address of any person present and arrest any person who obstructs or attempts to obstruct the search, or who fails to give his name or address, or who gives a name or address which the member reasonably believes to be false. *Subsection (13)* provides for penalties for (i) obstructing the effecting of the warrant, (ii) refusal to supply name and address or (iii) giving a false or misleading name or address. *Subsection (14)* clarifies that the power to issue a search warrant under this section does not affect any other power under law to issue a search warrant. *Subsection (15)* defines “evidence” as used in this section.

Section 60: Search for particular evidence for use outside State

Subsection (1) provides that this section applies to a request from a designated state for help in obtaining evidence for the purpose of a criminal investigation or proceedings, where a search power exists domestically in relation to the conduct giving rise to the offence. *Subsection (2)* limits the application of the section to (a) cases where the offence is punishable under both the law of the State and that of the member state by imprisonment for at least six months, or (b) cases where the offence is punishable under Irish law by at least six months’ imprisonment and where it is being prosecuted in the member state by administrative authorities, whose decision may give rise to criminal proceedings. *Subsection (3)* provides that the section does not apply to a request from a designated state other than a member state unless dual criminality applies. *Subsection (4)* specifies that this section also applies to a request made under Part 4 of this Act, relating to the freezing of evidence, where a penalty of not less than three years’ imprisonment applies in the member state concerned. Under *subsections (5) and (6)*, the Minister may send a request to which this section applies along with any related documents to the Commissioner of the Garda Síochána for compliance, provided that an assurance has been given by the requesting authority that any material furnished will not, without prior consent, be used for any purpose other than that specified in the request and that the material will be returned when no longer required unless the Minister indicates otherwise. *Subsection (7)* provides that either the consent of the occupier or a legal authorisation is required for a member of the Garda Síochána to enter a place in furtherance of a request. *Subsection (8)* provides that unless the material sought is already in the possession of the Garda Síochána, a member of the Garda Síochána of at least the rank of inspector must apply to a judge for a production order. *Subsection (9)* sets out the requirements to be met in order for such an order to be issued. The judge must have reasonable grounds to believe that this section is applicable; that the person named possesses the required material and that s/he has not agreed to produce it or is unlikely to agree and that seeking consent might seriously prejudice compliance with the request. If these conditions are met, the judge may order the person to produce the required material or allow a member of the Garda Síochána access to the material. *Subsection (10)* provides that the order may include a requirement that a member of the Garda Síochána be granted entry to a particular place to obtain access to the material required. *Subsection (11)* provides for a judge to amend or terminate such an order. *Subsection (12)* provides that any material required that is non-legible must be produced in legible format. *Subsection (13)* clarifies that documents subject to legal privilege are exempt from the provisions of the warrant but that other obligations with respect to secrecy

under law do not affect a warrant issued under this section. *Subsection (14)* provides that if a person does not comply with the order, then the order becomes in effect a search warrant. *Subsection (15)* provides for the privilege of material supplied by or on behalf of the government of another state to a Government Department or other State agency where an undertaking was given that the material would be used only for a specified purpose, unless that government consents. *Subsection (16)* clarifies that this section is without prejudice to the provisions of section 59 dealing with search for evidence for use outside the State. *Subsection (17)* defines “evidential material” as used in this section.

CHAPTER 2

IDENTIFICATION EVIDENCE

Section 61: Definitions (Chapter 2)

This section provides definitions of certain terms used in this Chapter.

Section 62: Identification evidence for use in State

Subsection (1) provides that a judge may issue a letter of request for assistance where it appears to him or her that criminal proceedings or a criminal investigation is underway and identification evidence for the purposes of the proceedings or investigation may be obtained from a designated state. Under *subsection (2)* the Director of Public Prosecutions or a person charged in the proceedings may apply for a letter of request. *Subsections (3)* and *(4)* provide that the letter of request may be transmitted to the appropriate authority and that in certain specified circumstances the Director of Public Prosecutions may issue and transmit a letter of request directly. *Subsection (5)* sets out what must be included in the letter of request. A statement is necessary that the evidence is required for a criminal investigation or for criminal proceedings and that it will be returned to the appropriate authority when no longer required for this purpose unless that authority indicates otherwise. A brief description of the conduct concerned must be provided and any other available information which will help to comply with the request. *Subsection (6)* provides that any evidence so obtained must only be used for the specified purpose. *Subsection (7)* provides that the evidence provided will be returned when it is no longer required for the purpose for which it was supplied, unless the authority indicates otherwise. *Subsections (8)* and *(9)* provide that a report of the taking of the evidence signed by an appropriate person, a record of the evidence kept by the appropriate authority and any certified translation of such documents are admissible as evidence without further proof. *Subsection (10)* defines “appropriate authority” as used in this section.

Section 63: Identification evidence for use outside State

This section sets out what must be included in a request from a designated state to obtain identification evidence. A statement is necessary that the evidence is required in connection with criminal proceedings or a criminal investigation and a description of the conduct concerned is also required.

Section 64: Action on request

Subsection (1) provides that the Minister may send a request which complies with the provisions set out in section 63 to the Commissioner of the Garda Síochána for action. The Minister must be satisfied that any evidence furnished in response to the request will not be used for any purpose other than that specified in the request without the Minister’s consent and that the evidence will be returned or destroyed once no longer required. *Subsection (2)* provides that if

the evidence is not in the possession of the Garda Síochána, a member of the Garda Síochána shall inform the person from whom the evidence is required of the nature of the evidence, that it has been requested in connection with criminal proceedings or a criminal investigation in another state, of his or her right to refuse to provide the evidence and that if consent is not given, this fact may be used in proceedings in the designated state. *Subsection (3)* provides for the taking of the evidence following consent. *Subsection (4)* provides for the giving of identification evidence by a person in prison. Such evidence may only be taken if it relates to an offence other than that for which the person is in prison. *Subsection (5)* provides that intimate bodily samples may only be taken by a doctor and dental impressions by a doctor or dentist. *Subsection (6)* provides for forensic testing of certain specified samples. *Subsection (7)* lays out provisions for the taking of hair samples. *Subsection (8)* outlines the particulars that must be recorded when identification evidence is taken. *Subsection (9)* provides for the transmission of identification evidence to the requesting authority. *Subsections (10)* and *(11)* provide for the destruction of the evidence in certain circumstances and for the possible extension of time limits in relation to destruction. *Subsection (12)* defines certain terms as used in this section.

PART 7

OTHER FORMS OF ASSISTANCE

CHAPTER 1

SERVICE OF DOCUMENTS

Sections 65, 66 and 67 are based on sections 49 and 56 of the Criminal Justice Act, 1994. They have been amended in light of operational experience and for the purpose of giving effect to Article 5 of the 2000 Convention and Article 16 of the Second Additional Protocol.

Section 65: Documents for service outside State

Subsection (1) provides that a court in this country may issue a document to be served on a person present in another state in the context of criminal proceedings. *Subsections (2)* and *(3)* provide for the translation of the document if required. *Subsection (4)* provides that if the document requires the recipient to appear in proceedings, a penalty for non-appearance will not be referred to in the document, and this subsection also sets out what information must accompany the document. *Subsections (5)* and *(6)* provide that non-compliance with a requirement specified in the document does not constitute contempt of court and the person may not be compelled to attend the relevant proceedings unless the document is served on the person in the State. *Subsections (7)* and *(8)* provide that a person who is in the State as a defendant in compliance with a requirement of the document may not be acted against in respect of an offence committed before arriving in the State other than an offence specified in the document. *Subsection (9)* makes provision for the cessation of the immunity specified in *subsections (7)* and *(8)*.

Section 66: Mode of service

Subsection (1) provides that a document referred to in section 65 may be served by post. *Subsection (2)* provides that it may be transmitted to a designated state with a request for it to be served by a method other than by post in accordance with the relevant international instrument. *Subsection (3)* lays out the conditions under which service by a method other than post may be requested. *Subsection (4)* provides that such a document may be served in a state other than a designated state by arrangement by the Minister.

Section 67: Service of documents in State

Subsection (1) provides that this section applies to a request for service of a document requiring a person to appear as a defendant or witness in criminal proceedings in a designated state and to any other document issued by a court or authority in that state in relation to criminal proceedings. *Subsection (2)* provides for the document to be served by post, unless the request specifies that personal service is required. *Subsections (3) and (4)* provide for personal service of the document if requested and for translation of the document if required. *Subsection (5)* sets out the conditions under which personal service can be undertaken. *Subsection (6)* provides that the Commissioner shall cause the document and the notice provided for in subsection (11) to be served and send proof of service to the Minister for transmission to the requesting authority. If service is not possible, the Minister shall be informed, indicating the reason for non-service. *Subsection (7)* provides that a person served with a document under this section is under no obligation under the law of the State to comply with it. *Subsections (8) and (9)* provide that a document requiring a person to appear as a defendant or witness in criminal proceedings in a state may not be served until an assurance is given that the person will not be acted against, should he or she appear, in respect of any conduct taking place prior to his or her departure from the State (other than that already specified in the document in the case of a defendant). Conditions for the cessation of the immunity provided in subsections (8) and (9) are set out at *subsection (10)*. *Subsection (11)* provides that a notice must accompany a document served under this section and that the notice shall state that there is no obligation on the person to comply, the provisions of either subsection 8 or 9 as appropriate, and the provisions in subsection (10). The notice will also indicate that under the law of the designated state the person may not have the same rights and privileges as apply in the State in relation to criminal proceedings. *Subsection (12)* provides for the translation, if required, of that notice.

CHAPTER 2

RESTITUTION

The purpose of Chapter 2 is to give effect to the provisions in Article 8 of the 2000 Convention and Article 12 of the Second Additional Protocol.

Section 68: Restitution of stolen property from designated state

Subsections (1) and (2) provide that an order for restitution may be made under the Criminal Justice (Theft and Fraud Offences) Act, 2001 with regard to property in a designated state, without prejudice to the rights of any valid third parties in relation to the property concerned. *Subsection (3)* provides that, on receipt of an application from a person entitled to recover the property, a copy of the order shall be sent by the Central Authority to the appropriate authority in the designated state. *Subsection (4)* sets out the information that must accompany the request.

Section 69: Request to State for restitution of stolen property

This section provides at *subsection (1)* for a request to be made for property in the State obtained by criminal means to be placed at the disposal of the requesting authority in order for it to be returned to its owner. *Subsection (2)* provides that the request must be in writing and sets out the information that must accompany such a request.

Section 70: Action on request

This section provides at *subsection (1)* that on receipt of a request which meets the criteria set out at section 69, the Minister may cause an application to be made to the District Court for a restitution order for the property concerned. *Subsection (2)* provides for notice of the application to be given to any person affected or appearing to be affected by such an order unless that person's whereabouts cannot reasonably be ascertained.

Section 71: Order for restitution

This section provides at *subsection (1)* that on receipt of an application, the District Court, if satisfied that sections 69 and 70(2) have been complied with and that the property is in the possession of the person specified, may order that the property be delivered to the member of the Garda Síochána specified in the application. *Subsection (2)* provides for delivery to the requesting authority. *Subsection (3)* provides that an order may also be made for the delivery of property in the custody of the Garda Síochána. *Subsection (4)* sets out the circumstances in which a restitution order may not be made. An order will not be made where the property is required as evidence in criminal or civil proceedings or if the person claiming to own the property has not been given an opportunity to make representations as to why the order should not be made. *Subsection (5)* clarifies that a judge of the District Court in a district where either some or all of the property is located may make an order under this section.

CHAPTER 3

ASSISTANCE IN RELATION TO CONTROLLED DELIVERIES

The purpose of this Chapter is to give effect to Article 12 of the 2000 Convention and Article 18 of the Second Additional Protocol which deals with controlled deliveries.

Section 72: Interpretation (Chapter 3)

This section provides definitions of terms used in this Chapter. *Subsection (2)* clarifies that references in this Chapter to the competent authority in the State are to be considered references to the Minister.

Section 73: Controlled delivery in designated state

Subsection (1) provides that a request may be made to a designated state to allow a delivery to be made in that state by specified persons or persons of a specified description, including members of the Garda Síochána and customs and excise officers. *Subsection (2)* provides that any such request must include details of the offence to which the controlled delivery relates.

Section 74: Controlled delivery in State

This section provides at *subsection (1)* for a request to be made by a designated state for a controlled delivery to be made in the State. Specified persons or persons of a specified description from that designated state may be permitted to participate in the operation. *Subsection (2)* provides that details of the offence to which the controlled delivery relates must be included in the request. *Subsection (3)* outlines the conditions to be met for the request to be granted. The competent authority must be satisfied that the controlled delivery is being made for the purposes of an investigation into an offence and that there are reasonable grounds for believing that a controlled delivery is in the public interest. *Subsection (4)* provides that if the controlled delivery is concerned with the importation of illegal drugs,

the delivery will be regulated in accordance with the agreed procedures specified which apply between customs and excise authorities, the Garda Síochána and the Naval Service. *Subsection (5)* provides that if the controlled delivery is concerned with a revenue offence, customs and excise officers shall control the delivery. Under *subsection (6)* deliveries relating to other offences shall be under the control of the Garda Síochána. *Subsection (7)* provides that certain actions requested by a person from the designated state may be taken if such actions are possible. *Subsection (8)* states that the Memorandum of Understanding and the Operational Protocol referred to at *subsection (4)* have been placed in the Oireachtas Library.

Section 75: Amendment of Garda Síochána Act 1989

This section amends sections 3 and 4 of the Garda Síochána Act, 1989. The amendment to section 3 provided for in *subsection (1)* enables a member of the Garda Síochána to serve outside the State in the making of a controlled delivery. The amendment to section 4 deals with the registration of births and deaths occurring outside the State while the member is serving outside the State in such a capacity. *Subsection (2)* is a technical provision.

Section 76: Application of Criminal Justice (Joint Investigation Teams) Act 2004 in relation to controlled deliveries

This section provides for provisions of the Criminal Justice (Joint Investigations Teams) Act, 2004 to apply to a person participating in a controlled delivery. The relevant provisions relate to criminal and civil liability and the use of information.

PART 8

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE STATE AND THE UNITED STATES OF AMERICA

The purpose of this Part is to enable effect to be given in Irish law to the Ireland-US Bilateral Treaty on Mutual Legal Assistance, signed in 2001, as amended by the EU-US Agreement on Mutual Legal Assistance, signed in 2003.

Section 77: Definitions (Part 8)

This section provides definitions of certain terms used within this Part.

Section 78: Application in State of Ireland-US Treaty

This section provides at *subsections (1)* and *(2)* for the Ireland-US Treaty to have the force of law in the State and for judicial notice to be taken of it. *Subsection (3)* provides for the mutual assistance provisions of this Act, including the making, variation and discharge of orders, to have effect between the State and the USA. *Subsection (4)* provides that section 7 of the Joint Investigation Teams Act, 2004 applies to a joint investigation team established under the Ireland-US Treaty, as amended by the EU-US Agreement. *Subsections (5)* and *(6)* provide for data protection and specify that Article 7 of the Treaty dealing with the use of personal data does not override the relevant provision of the Data Protection Act, 1988. *Subsection (7)* provides that a court may take into account the Explanatory Note and the EU-US Agreement, as appropriate, when interpreting provisions of the EU-US Agreement or of the Ireland-US Treaty.

PART 9

MISCELLANEOUS

Section 79: Amendment of section 9 of the Criminal Justice (Joint Investigation Teams) Act 2004

This section amends section 9 of the Criminal Justice (Joint Investigations Team) Act, 2004 by including provision for officers of an authority of a country designated by the Minister under section 4 of this Act to participate in joint investigation teams. The purpose of the amendment is to allow participants in joint investigation teams from countries which are designated for mutual assistance purposes.

Section 80: Disclosure prejudicing investigation

This provision is based on section 58 of the Criminal Justice Act, 1994. Subsection (1) provides that where a request is made relating to a criminal investigation, any person who knows or suspects that such an investigation is underway and discloses any information likely to prejudice the investigation is guilty of an offence. Subsection (2) specifies the penalties to apply to a person found guilty in this regard. Subsection (3) provides that it is a defence if a person can prove that he or she did not know or suspect that the information disclosed could prejudice the investigation, or if s/he had reasonable excuse to disclose the information or had lawful authority in this regard.

Section 81: Liability of officers of body corporate

This section is based on section 59 of the Criminal Justice Act, 1994. Subsection (1) provides that where an offence under this Act is committed by a corporate body and it is proved that a director, manager, secretary or other officer, or anybody acting as such, consented to, assisted in or allowed the offence to occur, then that person is guilty of an offence and may be proceeded against. Subsection (2) provides that subsection (1) also applies to members of a body corporate. Subsection (3) extends the provisions of this section to apply to unincorporated bodies.

Section 82: Evidence in proceedings (general)

This section provides at subsection (1) that a request or supporting document, an order or warrant or a record of such an order or warrant, which is signed on behalf of the authority making the request, is admissible without proof as evidence of the matters mentioned therein. Subsection (2) provides for a translation of a document in subsection (1) to be admissible as evidence. Subsection (3) provides that a document purporting to be a copy of a document listed in subsection (1), certified as a copy and bearing a seal of the authority concerned, is to be considered a true copy. Subsection (4) provides that a document purporting to be the text of a reservation or declaration under an international instrument and signed by an officer of the Department of Foreign Affairs is admissible as proof of the reservation or declaration.

Section 83: Provisional measures

Subsection (1) provides that where criminal proceedings or a criminal investigation are underway in a designated state and a competent authority of that state requests the Minister to take provisional measures to preserve evidence, maintain an existing situation or protect endangered legal interests, an application may be made to the High Court for the requested measures to be granted. Subsection (2) provides that the High Court may grant such provisional measures as it has power to grant. Subsection (3) provides that the Court may specify the period for which the provisional measures shall last and any conditions or limitations to apply. Subsection (4) provides that

the High Court may refuse to grant the measures sought if jurisdictional considerations make it inexpedient to do so.

Section 84: Amendment of Criminal Justice Act, 1994

This section amends certain provisions of the Criminal Justice Act, 1994. The principal amendments are the substitution of “freezing” for “restraint” in the relevant sections; the extension of the making of confiscation orders to indictable offences irrespective of whether the person concerned has been convicted of the offence on indictment; the conversion to euros of a table relating the amount outstanding under a confiscation order to the period of imprisonment applying; the extension of the application of freezing orders to a member state of the European Union and clarification that revenue offences include offences relating to taxes, duties, customs and exchange regulation under the meaning of the 1994 Act. Section 63 of the 1994 Act is amended by the addition of a provision permitting members of the Garda Síochána to take away or be given access to documents and to make and take away copies of such documents, which may be retained as evidence.

Section 85: Personal data protection

This section provides at *subsection (1)* that the provisions of the relevant instrument apply in relation to personal data obtained under the terms of the instrument. *Subsection (2)* clarifies that this is without prejudice to the Data Protection Act, 1988. *Subsection (3)* provides that the Data Protection Acts, 1998 and 2003 apply to the data concerned.

Section 86: Regulations

This is a standard provision. It enables regulations to be made by the Minister to give effect to this Act.

Section 87: Expenses

This is a standard provision providing for the payment of any expenses incurred in the operation of this Act out of moneys provided by the Oireachtas.

Section 88: Laying of order or regulations before each House of the Oireachtas

This is a standard technical provision dealing with the laying of orders or regulations made under the Act before both Houses of the Oireachtas.

Schedules

The English text of the seven mutual legal assistance instruments being given effect to in this Bill is appended in the Schedules.

Financial Implications

As the mutual legal assistance provisions laid out in the Bill are intended to make mutual legal assistance arrangements more efficient (many of which are already in place), it is not envisaged that there will be significant costs arising. Some additional costs may arise in relation to the new forms of mutual assistance which come under the terms of the Bill. It is not, however, possible to quantify the extent of such expenditure until the Act becomes operational. The costs will be met from the Office of the Minister for Justice Vote, the Courts Vote or the Garda Síochána Vote as appropriate.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí Nollaig 2005