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**AN BILLE UM BARÁNTAS GABHÁLA EORPACH  
(FEIDHM MAIDIR LE TRÍÚ TÍORTHA AGUS LEASÚ)  
AGUS UM EISEACHADADH (LEASÚ), 2011**

**EUROPEAN ARREST WARRANT (APPLICATION TO  
THIRD COUNTRIES AND AMENDMENT) AND  
EXTRADITION (AMENDMENT) BILL 2011**

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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

1. The purpose of this Bill is to enable the application of provisions of the European Arrest Warrant Act 2003 to states other than EU Member States (Part 2 of the Bill) and to make a number of amendments, mainly of a procedural or technical nature, to the European Arrest Warrant Act 2003 (Part 3 of the Bill) and to the Extradition Acts 1965-2001 (Part 4 of the Bill).

*Provisions of Bill*

**PART 1**

**PRELIMINARY AND GENERAL  
(Section 1)**

*Section 1 (Short title and collective citation)*

2. *Section 1* is a standard legislative provision dealing with the Short Title of the Bill and collective citations.

**PART 2**

**APPLICATION TO THIRD COUNTRIES OF EUROPEAN  
ARREST WARRANT ACT 2003  
(Section 2)**

*Part 2* enables the provisions of the European Arrest Warrant Act 2003 to be applied to states other than Member States in the circumstances set out. The European Arrest Warrant Act 2003 gave effect to the EU Framework Decision on the European arrest warrant and the surrender procedures between Member States.

*Section 2 (Order)*

3. Section 2(1) defines terms used in section 2.

*Section 2(2)* enables the Minister for Foreign Affairs and Trade, following consultation with the Minister for Justice and Equality, to make order(s) applying all or any of the provisions of the European Arrest Warrant Act 2003, which would otherwise apply only to EU Member States, to a third country. This will enable the efficient and effective application of the Act's provisions to third countries, subject to limitations.

*Section 2(3)* stipulates that such an order may only be made where there is in force an agreement for the surrender of persons between the third country concerned and the European Union. This limits the scope of the section and means that the enhanced mechanisms of the Act of 2003 cannot be applied unless there is an EU agreement in force. Such an agreement would require a high degree of mutual trust between the EU and the third country concerned.

*Section 2(4)* limits the extent of the order that may be made under section 2(2) to the terms of the agreement it is to give effect to.

Subsection (5) is a standard provision on the laying of orders made under the section before the Oireachtas.

### PART 3

#### AMENDMENTS TO EUROPEAN ARREST WARRANT ACT 2003 (Sections 3 to 22)

*Section 3 (Interpretation)*

4. Section 3 defines "Act of 2003" for the purposes of Part 3.

*Section 4 (Amendment of section 2 of Act of 2003)*

5. *Section 4* inserts a definition for "Council Framework Decision 2009/299/JHA" in the Act of 2003. This EU Framework Decision relates to persons who were tried in their absence and amendments arising from its transposition are contained in sections 11, 19 and 22 of this Bill.

*Section 5 (Amendment of section 10 of Act of 2003)*

6. *Section 5* removes a reference to the Framework Decision on the European Arrest Warrant. This is to clarify that the Framework Decision does not have direct effect in Irish law.

*Section 6 (Amendment of section 11 of Act of 2003)*

7. *Section 6* amends section 11 of the Act to include a reference to Council Framework Decision 2009/299/JHA. This is to take account of the revised form of European arrest warrant (EAW) provided for in that Framework Decision.

*Section 7 (Amendment of section 12 of Act of 2003)*

8. *Section 7* amends section 12 of the Act to provide that the written record of a document transmitted in accordance with section 12(3)(b) will be deemed to be the document transmitted. This removes any uncertainty as to the status under the Act of that written record.

*Section 8 (Amendment of section 13 of Act of 2003)*

9. *Section 8* removes a reference to the Framework Decision on the European Arrest Warrant. This is to clarify that the Framework Decision does not have direct effect in Irish law.

*Section 9 (Amendment of section 15 of Act of 2003)*

10. *Section 9* provides for extensive amendments to section 15 of the Act.

Paragraphs (a) and (b) remove references to the Framework Decision. This is to clarify that the Framework Decision does not have direct effect in Irish law.

Paragraph (c) substitutes the text of sections 15(3) to (9) of the Act, as follows:

- *Section 15(3)* no longer provides that a person to whom an order relates may request that the order take effect earlier than the period specified. This had been creating difficulties in the logistics of carrying out the order for surrender within the time limits specified in the section.
- A new *section 15(3A)* restates the provisions of the existing subsection (5) of the Act.
- A new *section 15(3B)* provides for a right to appeal to the Supreme Court against the making of an order for surrender, or a decision not to make such an order. This change is being made because, although section 15 deals with cases where the requested person consents to being surrendered, there might be circumstances in which grounds for an appeal would arise. The provision is identical to the appeal provision in section 16 of the Act of 2003.
- *Sections 15(4)(a)* and (b) are similar to the existing text of the Act.
- *Section 15(4)(c)* specifies the 20 day period for which the person committed to prison or a remand institution is to be detained pending the carrying out of the terms of the order. The period is made up of the 10 days before the order takes effect under section 15(3) and the 10 day period for the carrying out of the order specified in section 15(3A). The purpose is to bring certainty to the period for which a person may be detained.
- *Section 15(4)(c)* is new. It requires the High Court to direct that if the person is not surrendered before the deadline for surrender or if it appears to the Central Authority that, because of circumstances beyond the control of the State or the issuing state concerned, the person will not be surrendered before the deadline, the person must be brought before the High Court again. The effect of (4)(d)(i) is to ensure that the person to be surrendered will remain under the control of the Court if the surrender has not been made by ordering the person to be brought before it again. Subparagraph (d)(ii) takes a pragmatic approach by providing that the person can be brought before the Court before the expiry of the time specified if the Central Authority considers the deadline will not be met. Without this provision the Authority would have to wait until the expiry of the specified period to bring the person before the Court which could extend the period of detention unnecessarily.

- *Section 15(5)* provides that where a person is brought before the High Court because the deadline for surrender was not or will not be met, and the Court is satisfied that the delay was beyond the control of Ireland or the issuing state, the Court fixes a new surrender date with the agreement of the issuing judicial authority. It also provides for detention of the person, pending surrender, for up to 10 days after the new date fixed. This new provision is to bring the Act of 2003 closer to the relevant provisions of the Framework Decision in relation to the circumstances in which a new date for surrender may be fixed and the requirement for the agreement of the issuing judicial authority.
- A new *section 15(5A)* is inserted which provides that the person must be surrendered to the issuing state concerned not later than 10 days after the new date fixed, or else discharged. This provision is also intended to reflect more closely the provisions of the Framework Decision.
- A new *section 15(5B)* is inserted which is intended to cover a situation where the period for surrender has expired and the surrender has not been made, for example, a last minute flight cancellation. This section provides that in such circumstances the person will be deemed to be in lawful custody until the appearance before the Court.
- A new *section 15(6)* is inserted which provides that where a person lodges an appeal pursuant to subsection (3B), or makes a complaint under Article 40.4.2 of the Constitution, the person won't be surrendered while proceedings relating to the appeal or complaint are pending. This new text reflects the fact that the new section 15(3B) provides for a right of appeal.
- A new *section 15(7)* is inserted to clarify that the High Court may remand a person on bail or in custody pending an appeal to the Supreme Court. Some doubt had been expressed as to the Court's jurisdiction in this matter.

*Section 10 (Amendment of section 16 of Act of 2003)*

11. *Section 10* provides for extensive amendments to section 16 of the Act, many of which are identical to the changes made to section 15 of the Act.

Paragraph (a) provides a new section 16(1)(c) which requires a European arrest warrant to state, where appropriate, the matters required by section 45(d) of the 2003 Act as substituted by section 22 of this Bill. This refers to cases where persons are tried in their absence and reflects the requirements of Council Framework Decision 2009/299/JHA on persons tried *in absentia*.

Paragraph (b) removes a reference to the Framework Decision from section 16(1)(e). This is to clarify that the Framework Decision does not have direct effect in Irish law.

Paragraph (c) inserts a new text of section 16(2)(a) to require that a European arrest warrant includes, where appropriate, the matters required by section 45(d) of the 2003 Act as substituted by section 22 of this Bill. This also refers to cases where persons are tried in their absence and reflects the requirements of Council Framework Decision 2009/299/JHA on persons tried *in absentia*.

Paragraph (d) removes a reference to the Framework Decision from section 16(2)(d). This is to clarify that the Framework Decision does not have direct effect in Irish law.

Paragraph (e) substitutes the text of sections 16(3) to (13) of the Act, as follows:

- *Section 16(3)* no longer provides that a person to whom an order relates may request that the order take effect earlier than the period specified. This had been creating difficulties in the logistics of carrying out the order for surrender within the time limits specified in the section.
- A new *section 16(3A)* restates the provisions of the existing subsection (5) of the Act.
- *Sections 16(4)(a)* and *16(4)(b)* contain minor changes of wording which have no substantive effect.
- *Section 16(4)(c)* specifies the 25 day period for which the person committed to prison or a remand institution is to be detained pending the carrying out of the terms of the order. The period is made up of the 10 days before the order takes effect under section 16(3) and the 15 day period for the carrying out of the order specified in section 16(3A). The purpose is to bring certainty to the period for which a person may be detained.
- *Section 16(4)(c)* is identical to the new section 15(4)(c). It requires the High Court to direct that if the person is not surrendered before the deadline for surrender or if it appears to the Central Authority that, because of circumstances beyond the control of the State or the issuing state concerned, the person will not be surrendered before the deadline, the person must be brought before the High Court again.
- *Section 16(5)* is identical to the new section 15(5). It provides that where a person is brought before the High Court because the deadline for surrender was not or will not be met, and the Court is satisfied that the delay was beyond the control of Ireland or the issuing state, the Court fixes a new surrender date with the agreement of the issuing judicial authority. It also provides for detention of the person, pending surrender, for up to 10 days after the new date fixed. This new provision is to bring the Act of 2003 closer to the relevant provisions of the Framework Decision in relation to the circumstances in which a new date for surrender may be fixed and the requirement for the agreement of the issuing judicial authority.
- *Section 16(5A)* is identical to the new section 15(5A). It provides the person must be surrendered to the issuing state concerned not later than 10 days after the new date fixed, or else discharged.
- *Section 16(5B)* is identical to the new section 15(5B). It is intended to cover a situation where the period for surrender has expired and the surrender has not been made, for example, a last minute flight cancellation. This section provides that in such circumstances the person will be deemed to be in lawful custody until the appearance before the Court.
- *Sections 16(6) to 16(12)* restate the existing sections 16(6) to (13) of the Act. The only substantive change here is the deletion of the existing section 16(7) which, in light of the substantial

changes to sections 16(4) to 16(5), is unnecessary. There are also some changes to cross-references in the interests of clarity.

*Section 11(a) (Amendment of section 18 of Act of 2003)*

12. *Section 11(a)* amends cross-references to sections 15 and 16 so as to broaden the application of the section 18(2).

*Section 11(b)* replaces sections 18(3) and (4) of the Act. It omits the requirement currently in the Act that the term of imprisonment be for an offence of which the person was convicted in the State and adds a requirement that the person is required to serve the term of imprisonment in the State. This is to address the situation of persons who are convicted of offences outside the State but who, under the transfer of prisoners legislation, are serving their sentence in the State.

The new *section 18(4)* removes the provision whereby a date for surrender of a person could be agreed by the Central Authority in the State and the issuing state. This has been removed as it is not in keeping with the Framework Decision on the EAW.

*Section 12 (Amendment of section 19 of Act of 2003)*

13. *Section 12* replaces section 19(1) of the Act to include a requirement that the person must be required to serve the term of imprisonment referred to in the State before the High Court can order conditional surrender.

*Section 13 (Amendment of section 20 of Act of 2003)*

14. *Section 13* repeals sections 20(3) and (4) of section 20 of the Act of 2003. The subject matter of the subsections is dealt with in the Rules of the Superior Courts and it is considered that this is a matter which is best addressed there.

*Section 14 (Amendment of section 21 of Act of 2003)*

15. *Section 14* substitutes the text of section 21 of the Act. The text now refers to persons detained in a prison or remand institution rather than committed to a prison or remand institution. This reflects the language in the substituted text of the subsections of sections 15 and 16. The substituted text also includes in each case, for reasons of clarity, specific reference to the relevant subsections of sections 15 and 16 of the Act.

*Section 15 (Amendment of section 22 of Act of 2003)*

16. *Section 15* substitutes the text of section 22(8) the effect of which is to remove the reference to the Framework Decision. This is to clarify that the Framework Decision does not have direct effect in Irish law.

*Section 16 (Amendment of section 23 of Act of 2003)*

17. This removes a reference to the Framework Decision in section 23(6). This is to clarify that the Framework Decision does not have direct effect in Irish law.

*Section 17 (Amendment of section 29 of Act of 2003)*

18. This substitutes the text of section 29(1). For reasons of clarity, it makes a specific reference to the relevant subsections of sections 15 and 16.

*Section 18 (Amendment of section 30 of Act of 2003)*

19. This replaces the text of sections 30(1) and 30(3) by substituting in each case, for reasons of clarity, a specific reference to the relevant subsections of sections 15 and 16.

*Section 19 (Amendment of section 33 of Act of 2003)*

20. *Section 19* amends section 33 of the Act. Its principal effect is to remove the requirement in section 33(1) that the court be satisfied that the person in respect of whom a warrant is sought is not in the State. In practice this can be difficult to state with certainty and it is not considered appropriate that the DPP should be required to meet this standard.

Subsection 19(b) repeals section 33(1B) and is consequential on the substitution of section 33(1).

Subsection 19(c) amends section 33(2) of the Act to include a reference to Council Framework Decision 2009/299/JHA which deals with persons tried in their absence.

Subsection 19(d) substitutes the text of section 33(5)(a) and is consequential on the substitution of section 33(1). This to take account of the revised form of European arrest warrant (EAW) provided for in that Framework Decision.

*Section 20 (Amendment of section 35 of Act of 2003)*

21. This amends section 35(1)(a) of the Act and is consequential on the substitution of section 33(1).

*Section 21 (Amendment of section 35 of Act of 2003)*

22. Section 21 amends section 38(1)(b) of the Act by deleting “or is an offence that consists of conduct specified in that paragraph,”.

*Section 22 (Amendment of section 45 of Act of 2003)*

23. *Section 22* transposes the provisions of the EU Framework Decision on Judgments in Absentia relating to the European arrest warrant. It sets out the grounds on which the state executing an EAW may refuse surrender if the person to whom the EAW refers was not present at the trial which led to the sentence being imposed.

## PART 4

### AMENDMENTS TO THE EXTRADITION ACT 1965 (Sections 23 to 33)

*Section 23 (Interpretation)*

24. *Section 23* defines “Act of 1965” as the Extradition Act 1965.

*Section 24 (Repeal of section 7B of Act of 1965)*

25. *Section 24* repeals section 7B of Act of 1965.

*Section 25 (Amendment of sections 15 to 17 of Act of 1965)*

26. *Section 25* substitutes the text of sections 15-17 of the Act of 1965. It clarifies the position regarding extradition where there are proceedings pending in the State for the same offence as that for which extradition is sought. It also makes provision for cases where the requested person has been convicted in his or her absence. It

clarifies the position on the refusal of extradition where the principle of “*ne bis in idem*” applies.

*Section 26 (Amendment of section 25 of Act of 1965)*

27. *Section 26* of the Bill amends section 25 of the Act of 1965, by providing for a “reproduction” or “copy” to satisfy the requirements of the subsection and by providing for the inclusion, where available, of identification material.

*Section 27 (Amendment of section 27 of Act of 1965)*

28. *Section 27* amends Section 27 of the Act of 1965 to insert a provision requiring a statement setting out the ground of urgency to be included in a request for provisional arrest under the section. It also recognises modern means of communications by providing that a request for provisional arrest may be transmitted by any means capable of producing a written record under conditions allowing its authenticity to be established.

*Section 28 (Insertion of section 28 in Act of 1965)*

29. *Section 28* amends the Act of 1965 by inserting a new section 28 to provide a general power of adjournment and remand to the High Court in proceedings under the Act.

*Section 29 (Amendment of section 29 of Act of 1965)*

30. *Section 29* amends Section 29(2) of the Act of 1965. The new text provides that an order for extradition may be made notwithstanding minor or technical defects in the request or the evidence adduced at the hearing. An important safeguard for the person sought is that the provision shall not apply where the Court considers an injustice would be done.

*Section 30 (Insertion of section 36A in Act of 1965)*

31. *Section 30* inserts a new section 36A in the Act of 1965 to provide for identification procedures. It authorises the Garda Síochána to photograph, fingerprint and palm print persons arrested under the Act for the sole purpose of verifying identity. Identification material of this type is often sent with extradition requests and hitherto the Garda Síochána had no power to take similar identification material for comparison purposes (Section 36A(1)). If such material is lost, damaged or otherwise unsuitable it may be taken on a second or further occasion (Section 36A(2)). Section 36A(3) provides that the powers under subsection (1) may only be exercised on the authority of a Garda of at least inspector level.

Under sections 36A(4) to (8), a Garda may use reasonable force to take identification material if the person fails or refuses to allow the material to be taken. Such force must be authorised by a Garda at superintendent level or higher. If given orally, the authority must be confirmed in writing as soon as practicable. A Garda who intends to use force must tell the person concerned that he intends to do so and has been authorised to do so. If force is used, a Garda, of inspector or higher rank, must be present and the event must be video-recorded.

*Section 36A(9)* sets out the period for which the material may be retained.

*Section 36A(10)* creates an offence of obstruction of a Garda in exercise of the powers under the section.

*Section 36A(11)* provides for the admission in evidence, without further proof, of such material if received from a country requesting extradition.

*Section 31 (Amendment of section 37 of Act of 1965)*

32. *Section 31* of the Bill amends section 37 of the Act of 1965 by broadening the range of documents that may be received in evidence without further proof when received from a country requesting extradition.

## PART 5

### AMENDMENTS TO OTHER ACTS

*Repeals*

33. *Sections 32 and 33* repeal redundant provisions from the Acts listed.

*Department of Justice and Equality,  
August, 2011.*