



An Bille um Thaifid Choiriúla (Malartú Faisnéise), 2019
Criminal Records (Exchange of Information) Bill 2019

Meabhrán Mínitheach
Explanatory Memorandum



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CRIMINAL RECORDS (EXCHANGE OF INFORMATION) BILL
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EXPLANATORY MEMORANDUM

Introduction

The main purpose of the Bill is to provide for the exchange of criminal record information between Ireland and other EU Member States. The Bill will transpose Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA. These EU instruments provide for this information exchange between Member States.

Provisions of the Bill

Section 1: Interpretation

Section 1 is a standard provision defining words and phrases used in the Act.

Section 2: Central Authority in the State

Section 2 provides for the designation of a Central Authority as required by the Framework Decision. The Commissioner of An Garda Síochána is designated as the Central Authority for the purposes of the European Criminal Records Information System (ECRIS). The Commissioner can delegate these functions to someone else to perform on their behalf.

Section 3: Recording of nationality of convicted persons

Section 3 provides for the recording, when available, of the nationality/nationalities of EU nationals who are convicted of an offence. This information is necessary to ensure relevant Central Authorities throughout the EU can have up-to-date information in relation to a person's convictions.

Section 4: Information relating to conviction in State of a person who is national of Member State

Section 4 provides that the Irish Central Authority, when available, must transmit criminal record information to the relevant Central Authority in the Member State of a person's nationality. Any update and subsequent change including deletion of this information must also be transmitted to the relevant Member State's Central Authority. On request from the other authority, the Irish Central Authority must transmit copies of relevant documentation in relation to any sentence, appeal etc.

Section 5: Information received under Article 4 of the Framework Decision

Section 5 provides for the storage of information received from other Member States relating to convictions in Member States of Irish nationals so that the Irish Central Authority's records are up-to-date and this information can be re-transmitted if required.

Section 6: Requests for information under Article 6 of the Framework Decision

Section 6 provides for the circumstances in which the Irish Central Authority may, and in some cases, shall request information on convictions from other Central Authorities. This section also provides for the format in which these requests should be made.

Section 7: Replies to request for information under Article 6 of Framework Decision in relation to person who is a national of State

Section 7 provides for the categories of information in relation to a person who is a national of the State, which can be transmitted to other Central Authorities. It also provides for any limitations on the re-transmission of information received from another Member State. However, in such cases, the Irish Central Authority must inform the requesting Central Authority of the original Member State who provided the information, so the requesting authority can then make a request directly to that other Member State.

Section 8: Reply to request for information under Article 6 of Framework Decision in relation to person who is not a national of the State

Section 8 provides for the categories of information, which can be transmitted, to other Central Authorities on receiving a request from them for information in relation to a person who is not a national of the State. This section also provides for the format in which these replies should be made.

Section 9: Time Limits for replies to requests under Article 6 of Framework Decision

Section 9 provides for deadlines to respond to requests for information.

Section 10: Transmission of information in accordance with Council Decision

This Section provides for the electronic transfer of information, whether this involves the transmission of records, a request for information, a reply to a request for information or the updating of information. Such transmissions will be referenced in accordance with the common codes agreed by Member States and contained in the implementing Council Decision 2009/316/JHA. This Decision and these codes are included in Schedule 4 of the Bill.

Section 11: Conditions for use of personal data

Section 11 provides for safeguards on how and when personal data which is received and transmitted, can be used. This section provides that such transmissions are in accordance with the General Data Protection Regulation and the Data Protection Act of 2018.

Section 12: Limitations on transmission of certain information to third country

If the Irish Central Authority receives a request for information from a country other than an EU Member State in relation to a person who is a national of the State, the Irish Central Authority can only provide information subject to the limitations outlined in Section 7 which relate to

any limits placed on this information by other Member States, e.g. can only be used for criminal proceedings etc.

Section 13: Disclosure of information under other enactments etc.

This section provides that this Bill does not affect any obligation or power to provide or request information under any other law. This is to ensure that this Bill does not impact negatively on any other piece of legislation.

Section 14: Expenses

Section 14 is a standard provision providing monies for the administration of this system.

Section 15: - Short title and commencement

Section 15 provides for the short title of the Act and provides for its commencement.

Schedule 1: Text of Framework Decision 2009/315/JHA

This Schedule includes the full text of the relevant Framework Decision.

Schedule 2: Information relating to a conviction

Sections 4 and 5 refer. This Schedule lists the information which can be provided on request.

Schedule 3: Other purposes for which information may be requested

Sections 6, 7, 8, 11 and 4 refer. This Schedule lists the other purposes, besides for criminal proceedings and related matters, that information can be exchanged.

Schedule 4 Council Decision 2009/316/JHA

This Schedule provides the full text of the implementing Council Decision.

*An Roinn Dlí agus Cirt agus Comhionannais,
Iúil, 2019.*