



An Bille um Barántas Gabhála Eorpach (Leasú), 2022
European Arrest Warrant Bill (Amendment), 2022

Meabhrán Míniúcháin
Explanatory Memorandum



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EXPLANATORY MEMORANDUM

Introduction

The purpose of the Bill is to amend the European Arrest Warrant Act 2003 ('2003 Act') to ensure that Irish law is fully consistent with Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) ('Framework Decision'). This follows the initiation in 2020 of EU infringement proceedings by the European Commission against Ireland.

In addition to the provisions required in order to ensure full consistency with EU law, this Bill also makes a number of amendments to ensure the continued efficient operation of the European arrest warrant system in Ireland.

Provisions of the Bill

Section 1 provides that the European Arrest Warrant Act 2003 is to be referred to as the "Act of 2003" for the sake of this Bill.

Section 2 provides that the amendments made through the Bill will only apply to new warrants i.e. those that are received by the State on or after the date on which the Act comes into operation.

Section 3 adds three new definitions to Section 2(1) (the interpretation) of the 2003 Act. The definitions are of 'flag', 'remand centre' and 'SIRENE Bureau'.

Section 4 amends section 10 of the 2003 Act. Section 4 provides for amendments which are consequential to the deletion of section 21A of the 2003 Act in section 9 of this Bill. The aim is to reflect as unambiguously as possible the requirement that a person will be arrested and surrendered to the State that sent the arrest warrant (the 'issuing state') where a criminal prosecution will be or is being brought against the person concerned.

Section 5 amends section 12 of the 2003 Act by providing for a clarification of what represents a record of the onward transmission of an arrest warrant that has been issued by the issuing state.

Section 6 amends section 13 of the 2003 Act by providing that the High Court's endorsement/refusal of an arrest warrant changes from being a discretionary power ('may') to being mandatory in nature ('shall') where it is satisfied that there has been compliance with the 2003 Act. The Section also ensures that the High Court's decision in this regard is taken as a matter of urgency.

Section 7, part a, amends section 14(5) of the 2003 Act by providing that there is certainty with the situation with regard to individuals who are on bail where an arrest warrant is not produced in court on the required date. Part b provides that any release that takes place under subsection 5 does not prejudice any potential re-arrest and surrender and provides for the High Court directing the Garda Commissioner to request the SIRENE Bureau to add a flag to a SIS alert in the three specific circumstances listed.

Section 8 inserts a new section (section 14A) into the 2003 Act. Subsections 1-3 and subsection 7 provide for the temporary transfer of the person who is the subject of an arrest warrant to the issuing state, under conditions agreed by the High Court and the judicial authority in the issuing state. Subsections 4-6 provide for an alternative to that temporary transfer, that the person who is subject of an arrest warrant be heard by a court in the State on the basis of a request made by the issuing state.

Section 9 amends section 15 of the 2003 Act. The amendments contained in section 9 relate to the situation arising when the individual who is subject to the arrest warrant, consents to their surrender. The proposed changes align the timelines in the 2003 Act for the making of the High Court decision (on the arrest warrant) and the surrender of the requested person to the issuing state with the relevant provisions in the EU Framework Decision.

Section 10 provides for similar amendments as provided for in section 9 with respect to the situation arising when the individual who is subject to the arrest warrant, does not consent to their surrender. Given that the person is not consenting to surrender, longer time periods for the making of the relevant High Court orders apply.

Section 11 inserts a new section (section 16A) into the 2003 Act. The section provides that in circumstances whereby the time-lines set out under sections 9 and 10 are not met, the failure to make those time-lines does not, either in the case of consent (section 9) or without consent (section 10), constitute a ground to refuse to surrender a person, does not prejudice the requirement (for the court) to make a decision as to whether to endorse an arrest warrant for execution and does not preclude the continued detention of the person under the 2003 Act.

Section 12 amends section 18 of the 2003 Act. The section provides for the issuing state to be consulted when the surrender is rescheduled following a postponement and the time limits involved for that rescheduled surrender.

Section 13 amends section 19 of the 2003 Act. The section provides that arrangements to do with the conditional surrender of a person to an issuing state are to be jointly agreed between the High Court and the judicial authority in the issuing state.

Sections 14 and 17 amend section 21 of the 2003 Act to substitute “remand centre” for “remand institution” and updates the relevant age limits in each place it occurs.

Section 15 amends section 22 of the 2003 Act. This section makes the currently discretionary power to apply the “rule of specialty” obligatory where the criteria are met. This rule is codified in international extradition treaties and states that an extradited person shall not be proceeded against, sentenced, detained or re-extradited in the requesting state for any offence committed before surrender other than the offence for which extradition was granted. The section also provides a time-limit for the application of the rule of specialty.

Section 16 amends section 23 of the 2003 Act. The section provides that the High Court is obligated to consent to a request for surrender from the issuing state to another Member State where certain requirements are met, such as where the person consents to the surrender. The section also introduces a time-limit for a decision on that surrender.

Section 18 amends section 23 of the 2003 Act. The section provides that the State will seek the consent of the third country concerned before approving the surrender of an individual who has already been extradited to the State from that third country which is not part of the arrest warrant system.

Section 19 inserts a new section (section 33A) into the 2003 Act. This section provides for the High Court being able to request another Member State to disapply the rule of speciality in respect of an individual who has already been surrendered to the State.

Section 20 inserts a new section (section 35A) into the 2003 Act. Section 20 provides that in circumstance where a person is arrested on foot of a relevant arrest warrant and where a sentence or detention order was imposed in the issuing state in absentia, the person shall receive a copy of the judgment against them which was the basis for the arrest warrant being issued (subsection 1). The sections also provides that an individual's detention, pending a retrial or an appeal, shall be reviewed regularly in accordance with the State's own law on detention (subsection 2).

Section 21 amends section 39 of the 2003 Act. The section provides that the State must have jurisdiction to prosecute the offence in question under its own criminal law and that it is only amnesty and pardon in Ireland, and not in the issuing Member State, which can result in non-execution of a surrender.

Section 22 amends section 41 of the 2003 Act. Section 22 provides an individual shall not be surrendered by the State for the execution of a sentence order or detention order for an offence for which any sentence of detention already imposed has been served, is in the process of being served or is not capable of being executed.

Section 23 amends section 42 of the 2003 Act. The section makes an amendment to the provision providing for no surrender where the Director of Public Prosecutions or the Attorney General is considering whether to bring proceedings against the person in the State for an offence. This amendment limits the application of this provision to cases where the Director or Attorney General has decided to bring such proceedings.

Section 24 amends section 45 of the 2003 Act. The sections provides that the High Court may refuse to order the surrender of the person where he or she did not appear at the proceedings giving rise to the arrest warrant (part b). The section also updates a legal reference to the EU - UK Trade and Cooperation Agreement and also provides that the High Court shall arrange for the issuing state to be informed of any request from a person for a copy of the judgment which was the basis for the issuance of the relevant arrest warrant (part c).

Section 25 amends section 46 of the 2003 Act. The section provides for 'privilege' as a ground for non-execution of surrender (subsection 1). The section also provides for both the High Court requesting from the State that a privilege or immunity be waived in circumstances where the State is responding to an arrest warrant (subsection 2) and the High Court requesting the same such waiver from another Member State where the State is issuing a relevant arrest warrant (subsection 3). Finally, the section also ensures that time-limits do not start to run until the High Court is informed of the fact that the privilege or immunity has been waived (subsection 4).

Section 26 provides for the repeal of section 21A, section 22(8), section 37(1)(b), section 39(1) and (3) in the 2003 Act.

Section 27 provides for the short title, collective citation, construction and commencement.

An Roinn Dlí agus Cirt,

Márta, 2022.