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Explanatory Memorandum](#)



Number 2 of 2005

CRIMINAL JUSTICE (TERRORIST OFFENCES) ACT 2005

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CRIMINAL JUSTICE (TERRORIST OFFENCES) ACT 2005

AN ACT TO ENABLE THE STATE TO MEET COMMITMENTS UNDERTAKEN AS PART OF THE INTERNATIONAL COMMUNITY, TO AMEND THE OFFENCES AGAINST THE STATE ACTS 1939 TO 1998 AND THE EUROPEAN ARREST WARRANT ACT 2003, AND TO MAKE PROVISION FOR RELATED MATTERS, INCLUDING THE RETENTION OF COMMUNICATIONS DATA.

[8th March, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY MATTERS

1.—This Act may be cited as the Criminal Justice (Terrorist Offences) Act 2005.

2.—*Section 32* comes into operation 4 months after the passing of this Act. Commencement.

3.—(1) In this Act, except where the context otherwise requires— Interpretation.

“act” includes omission and a reference to the commission or doing of an act includes a reference to the making of an omission;

“Act of 1939” means the Offences against the State Act 1939;

“Act of 1965” means the Extradition Act 1965;

“Act of 1985” means the Offences against the State (Amendment) Act 1985;

“Act of 1994” means the Criminal Justice Act 1994;

“Act of 1996” means the Proceeds of Crime Act 1996;

“Act of 1998” means the Offences against the State (Amendment) Act 1998;

“Act of 2003” means the European Arrest Warrant Act 2003;

“Irish ship” has the same meaning as in section 9 of the Mercantile Marine Act 1955;

“Minister” means Minister for Justice, Equality and Law Reform;

“ship” includes any vessel used in navigation.

(2) In this Act a reference to a state includes a reference to the sub-sovereign entities of the state.

(3) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an act referred to in *section 6(2), 9(3), 10(4) or 13(6)* is, for the purposes of this Act, considered—

(a) if he or she is a stateless person, to be habitually resident in the State on the date of the commission of that act, and

(b) in any other case, to be resident in the State on that date.

(4) In this Act—

(a) a reference to a section, Part or Schedule is to a section or Part of, or a Schedule to, this Act, unless it is indicated that a reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

(c) a reference to any other enactment is to that enactment as amended by or under any other enactment, including this Act, unless the context otherwise requires.

PART 2

SUPPRESSION OF TERRORIST GROUPS AND TERRORIST OFFENCES

Definitions for
Part 2.

4.—In this Part—

“Framework Decision” means the Framework Decision on Combating Terrorism adopted by the Council of the European Union at Luxembourg on 13 June 2002, the text of which is set out for convenience of reference in—

(a) *Part 1 of Schedule 1*, in the case of the Irish language text, and

(b) *Part 2 of Schedule 1*, in the case of the English language text;

“terrorist activity” means an act that is committed in or outside the State and that—

(a) if committed in the State, would constitute an offence specified in *Part 1 of Schedule 2*, and

(b) is committed with the intention of—

(i) seriously intimidating a population,

- (ii) unduly compelling a government or an international organisation to perform or abstain from performing an act, or
- (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a state or an international organisation;

“terrorist group” has the same meaning as in the Framework Decision;

“terrorist-linked activity” means an act—

(a) that is committed in or outside the State and that—

- (i) if committed in the State, would constitute an offence specified in *Part 2 of Schedule 2*, and
- (ii) is committed with a view to engaging in a terrorist activity,

or

(b) that is committed in or outside the State and that—

- (i) if committed in the State, would constitute an offence specified in *Part 3 of Schedule 2*, and
- (ii) is committed with a view to engaging in a terrorist activity or with a view to committing an act that, if committed in the State, would constitute an offence under section 21 or 21A of the Act of 1939.

5.—(1) A terrorist group that engages in, promotes, encourages or advocates the commission, in or outside the State, of a terrorist activity is an unlawful organisation within the meaning and for the purposes of the Offences against the State Acts 1939 to 1998 and section 3 of the Criminal Law Act 1976. Terrorist groups.

(2) For the purposes of this Act, the Offences against the State Acts 1939 to 1998 and section 3 of the Criminal Law Act 1976 apply with any necessary modifications and have effect in relation to a terrorist group referred to in *subsection (1)* as if that group were an organisation referred to in section 18 of the Act of 1939.

(3) *Subsections (1) and (2)* are not to be taken to be limited by any other provision of this Act that refers to provisions of the Offences against the State Acts 1939 to 1998 or that makes provisions of those Acts applicable in relation to offences under this Act.

(4) *Subsections (1) and (2)* apply whether the terrorist group is based in or outside the State.

6.—(1) Subject to *subsections (2) to (4)*, a person is guilty of an offence if the person— Terrorist offences.

(a) in or outside the State—

- (i) engages in a terrorist activity or a terrorist-linked activity,

(ii) attempts to engage in a terrorist activity or a terrorist-linked activity, or

(iii) makes a threat to engage in a terrorist activity,

or

(b) commits outside the State an act that, if committed in the State, would constitute—

(i) an offence under section 21 or 21A of the Act of 1939, or

(ii) an offence under section 6 of the Act of 1998.

(2) *Subsection (1)* applies to an act committed outside the State if the act—

(a) is committed on board an Irish ship,

(b) is committed on an aircraft registered in the State,

(c) is committed by a person who is a citizen of Ireland or is resident in the State,

(d) is committed for the benefit of a legal person established in the State,

(e) is directed against the State or an Irish citizen, or

(f) is directed against—

(i) an institution of the European Union that is based in the State, or

(ii) a body that is based in the State and is set up in accordance with the Treaty establishing the European Community or the Treaty on European Union.

(3) *Subsection (1)* applies also to an act committed outside the State in circumstances other than those referred to in *subsection (2)*, but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings referred to in *section 43(2)* for an offence in respect of that act except as authorised by *section 43(3)*.

(4) *Subsection (1)* does not apply in respect of—

(a) the activities of armed forces during an armed conflict insofar as those activities are governed by international humanitarian law, or

(b) the activities of the armed forces of a state in the exercise of their official duties insofar as those activities are governed by other rules of international law.

(5) To avoid doubt, the fact that a person engages in any protest, advocacy or dissent, or engages in any strike, lockout or other industrial action, is not of itself a sufficient basis for inferring that the person is carrying out an act with the intention specified in *paragraph (b)* of the definition of “terrorist activity” in *section 4*.

(6) Where a person is charged with an offence under *subsection (1)*, which in the opinion of the Attorney General was committed in or outside the State with the intention of—

- (a) unduly compelling the government of a state (other than a member state of the European Union) to perform or abstain from performing an act, or
- (b) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of such a state,

then, notwithstanding anything in this Act, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except with the consent of the Attorney General.

(7) Where in proceedings for the offence of engaging in or attempting to engage in a terrorist activity—

- (a) it is proved that the accused person committed or attempted to commit an act—
 - (i) that constitutes an offence specified in *Part 1 of Schedule 2*, or
 - (ii) that, if committed in the State, would constitute an offence referred to in *subparagraph (i)*,

and

- (b) the court is satisfied, having regard to all the circumstances including those specified in *subsection (8)*, that it is reasonable to assume that the act was committed, or the attempt was made, with the intention of—
 - (i) seriously intimidating a population,
 - (ii) unduly compelling a government or an international organisation to perform or abstain from performing an act, or
 - (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a state or an international organisation,

the accused person shall be presumed, unless the court is satisfied to the contrary, to have committed or attempted to commit the act with that intention.

(8) The circumstances referred to in *subsection (7)*, include—

- (a) whether the act or attempt referred to in *subsection (7)(a)*—
 - (i) created or was likely to create a collective danger to the lives or physical integrity of persons,
 - (ii) caused or was likely to cause serious damage to a state or international organisation, or

(iii) caused or was likely to result in major economic loss,
and

(b) any other matters that the court considers relevant.

(9) Where the Director of Public Prosecutions considers that another Member State of the European Communities has jurisdiction to try a person for any act constituting an offence under this section, the Director—

(a) shall co-operate with the appropriate authority in that other Member State, and

(b) may have recourse to any body or mechanism established within the European Communities in order to facilitate co-operation between judicial authorities,

with a view to centralising the prosecution of the person in a single Member State where possible.

Penalties for
terrorist offences.

7.—(1) A person guilty of an offence under *section 6(1)(a)* is liable on conviction to be punished according to the gravity of the offence as follows:

(a) to the sentence of imprisonment fixed by law, if the corresponding offence specified in *Schedule 2* is one for which the sentence is fixed by law;

(b) to imprisonment for life, if the corresponding offence specified in *Schedule 2* is one for which the maximum sentence is imprisonment for life;

(c) to imprisonment for a term not exceeding 2 years more than the maximum term of imprisonment for the corresponding offence specified in *Schedule 2*, if that corresponding offence is one for which a person of full capacity and not previously convicted may be sentenced to a maximum term of 10 or more years of imprisonment;

(d) to imprisonment for a term not exceeding 1 year more than the maximum term of imprisonment for the corresponding offence specified in *Schedule 2*, if that corresponding offence is one for which a person of full capacity and not previously convicted may be sentenced to a maximum term of less than 10 years of imprisonment.

(2) A person guilty of an offence under *section 6(1)(b)* is liable on conviction to the penalty to which he or she would have been liable had the act that constitutes the offence been done in the State.

(3) In this section, “corresponding offence”, in relation to a person convicted of an offence under *section 6(1)(a)*, means the offence for which the person would have been liable to be convicted had the act constituting the offence under that section been committed in the State in the absence of the intent referred to in *paragraph (b)* of the definition in *section 4* of “terrorist activity”.

PART 3

SUPPRESSION OF HOSTAGE-TAKING, TERRORIST BOMBING AND CRIMES
AGAINST INTERNATIONALLY PROTECTED PERSONS

8.—In this Part—

Definitions for
Part 3.

“Hostage Convention” means the International Convention against the Taking of Hostages adopted by resolution 34/146 of the General Assembly of the United Nations on 17 December 1979, the English language text of which is set out for convenience of reference in *Schedule 3*;

“Internationally Protected Persons Convention” means the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by resolution 3166 of the General Assembly of the United Nations on 14 December 1973, the English language text of which is set out for convenience of reference in *Schedule 4*;

“Terrorist Bombing Convention” means the International Convention for the Suppression of Terrorist Bombings adopted by resolution 52/164 of the General Assembly of the United Nations on 15 December 1997, the English language text of which is set out for convenience of reference in *Schedule 5*.

9.—(1) Subject to *subsections (3) to (5)*, a person is guilty of the offence of hostage-taking if he or she, in or outside the State—

- (a) seizes or detains another person (“the hostage”), and
- (b) threatens to kill, injure or continue to detain the hostage,

in order to compel a state, an international intergovernmental organisation, a person or a group of persons to do, or abstain from doing, any act.

(2) Subject to *subsections (3) to (5)*, a person who attempts to commit an offence under *subsection (1)* is guilty of an offence.

(3) *Subsections (1) and (2)* apply to an act committed outside the State if—

- (a) the act is committed on board an Irish ship,
- (b) the act is committed on an aircraft registered in the State,
- (c) the act is committed by a citizen of Ireland or by a stateless person habitually resident in the State,
- (d) the act is committed in order to compel the State to do or abstain from doing an act, or
- (e) the hostage is a citizen of Ireland.

(4) *Subsections (1) and (2)* apply also to an act committed outside the State in circumstances other than those referred to in *subsection (3)*, but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings referred to in *section 43(2)* for an offence in respect of that act except as authorised by *section 43(3)*.

(5) *Subsections (1) and (2)* do not apply in respect of any act of hostage-taking that constitutes an offence under section 3 of the Geneva Conventions Act 1962.

(6) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

Offence of terrorist bombing.

10.—(1) Subject to *subsections (4) to (6)*, a person is guilty of an offence if he or she, in or outside the State, unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against—

- (a) a place of public use,
- (b) a state or government facility,
- (c) a public transportation system, or
- (d) an infrastructure facility,

with intent to cause death or serious bodily injury.

(2) Subject to *subsections (4) to (6)*, a person is guilty of an offence if—

- (a) he or she, in or outside the State, unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place, facility or system referred to in any paragraph of *subsection (1)* with intent to cause extensive destruction to that place, facility or system, and
- (b) the destruction results in or is likely to result in major economic loss.

(3) Subject to *subsections (4) to (6)*, a person who attempts to commit an offence under *subsection (1) or (2)* is guilty of an offence.

(4) *Subsections (1) to (3)* apply to an act committed outside the State if the act is committed—

- (a) on board an Irish ship,
- (b) on an aircraft registered in or operated by the State,
- (c) by a citizen of Ireland or by a stateless person habitually resident in the State,
- (d) against a citizen of Ireland,
- (e) against a state or government facility of the State abroad, including an embassy or other diplomatic or consular premises of the State, or
- (f) in order to compel the State to do or abstain from doing an act.

(5) *Subsections (1) to (3)* apply also in respect of an act committed outside the State in circumstances other than those referred to in *subsection (4)*, but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings referred to in

section 43(2) for an offence in respect of that act except as authorised by section 43(3).

(6) Subsections (1) to (3) do not apply in respect of—

- (a) the activities of armed forces during an armed conflict insofar as those activities are governed by international humanitarian law, or
- (b) the activities of military forces of a state in the exercise of their official duties insofar as those activities are governed by other rules of international law.

(7) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

(8) Subject to subsection (9), a word or expression that is used in this section has the same meaning as it has in the Terrorist Bombing Convention.

(9) In this section “explosive or other lethal device” means any of the following:

- (a) an explosive weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage;
- (b) an incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage;
- (c) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of any of the following:
 - (i) a toxic chemical as defined in the Chemical Weapons Act 1997;
 - (ii) a microbial or other biological agent;
 - (iii) a toxin, whatever its origin or method of production;
 - (iv) a substance having an effect similar to the effect of anything referred to in any of subparagraphs (i) to (iii);
 - (v) ionising radiation or a radioactive substance, as defined in the Radiological Protection Act 1991.

11.—(1) Subject to subsections (3) and (4), a person is guilty of an offence if he or she does outside the State—

Offences against
internationally
protected persons.

- (a) an act to, or in relation to, an internationally protected person that, if done in the State, would constitute an offence specified in Part 1 of Schedule 6, or
- (b) an act in connection with an attack on the official premises, the private accommodation or any means of transportation of an internationally protected person that, if done in the State, would constitute an offence specified in Part 2 of Schedule 6.

(2) Subject to *subsections (3) and (4)*, a person is guilty of an offence if he or she—

- (a) attempts to commit an act that is an offence under *subsection (1)*, or
- (b) makes a threat to commit an act that is an offence under *subsection (1)* and intends the person to whom the threat is made to fear that it will be carried out.

(3) *Subsections (1) and (2)* apply to an act committed outside the State if the act is committed—

- (a) on board an Irish ship,
- (b) on an aircraft registered in the State,
- (c) by a citizen of Ireland, or
- (d) against a person who enjoys the status of an internationally protected person by virtue of functions exercised on behalf of the State.

(4) *Subsections (1) and (2)* apply also to an act committed outside the State in circumstances other than those referred to in *subsection (3)*, but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings referred to in *section 43(2)* for an offence in respect of that act except as authorised by *section 43(3)*.

(5) A person guilty of an offence under this section is liable on conviction to—

- (a) in the case of an offence under *subsection (1) or (2)(a)*, the penalty to which he or she would have been liable had the act that constitutes the offence been committed in the State, or
- (b) in the case of an offence under *subsection (2)(b)*, imprisonment for a term not exceeding 10 years.

(6) Subject to *subsection (7)*, a word or expression that is used in this section has the same meaning as in the Internationally Protected Persons Convention.

(7) In this section “internationally protected person” means, in relation to an offence under *subsection (1) or (2)*—

- (a) a person who, at the time of the commission of the offence—
 - (i) is a Head of State, a member of a body that performs the functions of a Head of State under the constitution of a state, a Head of Government or a Minister for Foreign Affairs, and
 - (ii) is outside the territory of the state in which he or she holds office,
- (b) a person who does not fall within *paragraph (a)* and who, at the time of the commission of the offence—

- (i) is a representative or official of a state or an official or agent of an international organisation of an intergovernmental character, and
 - (ii) is entitled under international law to protection from attack on his or her person, freedom or dignity,
- or
- (c) a person who, at the time of the commission of the offence—
 - (i) is a member of the family of a person mentioned in *paragraph (a)* and is accompanying him or her, or
 - (ii) is a member of the family and of the household of a person mentioned in *paragraph (b)*.

PART 4

SUPPRESSION OF FINANCING OF TERRORISM

12.—(1) In this Part, except where the context otherwise requires— Interpretation of
Part 4.

“disposal order” means an order under *section 16*;

“funds” means—

- (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and
- (b) any legal document or instrument in any form, including electronic or digital, evidencing title to, or any interest in, any asset, including, but not limited to, a bank credit, traveller’s cheque, bank cheque, money order, share, security, bond, draft and letter of credit;

“interim order” means an order under *section 14*;

“interlocutory order” means an order under *section 15*;

“member of the Garda Síochána” means a member of the Garda Síochána not below the rank of Chief Superintendent;

“respondent” means—

- (a) a person in respect of whom an application for an interim order or an interlocutory order has been made, or
- (b) a person in respect of whom an interim order or an interlocutory order has been made,

and includes a person who, but for this Act, would become entitled on the death of a person referred to in *paragraph (a)* or *(b)* to any funds to which such an order relates (being an order that is in force and is in respect of that person);

“Terrorist Financing Convention” means the International Convention for the Suppression of the Financing of Terrorism adopted by resolution 54/109 of the General Assembly of the United Nations on 9 December 1999, the English language text of which is set out for convenience of reference in *Schedule 7*.

(2) For the purposes of *sections 14 to 20*, a person is considered to be in possession or control of funds notwithstanding that all or part of them—

- (a) are lawfully in the possession or control of a member of the Garda Síochána of any rank or any other person, having been lawfully seized or otherwise taken by any such member or person, or
- (b) are subject to an interim order, an interlocutory order or any other order of a court that does either of the following or is to the like effect:
 - (i) prohibits any person from disposing of or otherwise dealing with the funds or diminishing their value;
 - (ii) contains any conditions or restrictions in that regard,

or
- (c) are subject to a letting agreement, the subject of a trust or otherwise occupied by another person or are inaccessible.

(3) *Subsection (2)* is not to be construed to limit the generality of *sections 11(2) and 13(2)* of the Act of 1996 as made applicable by *section 20* of this Act.

Offence of financing terrorism.

13.—(1) Subject to *subsections (6) and (7)*, a person is guilty of an offence if, in or outside the State, the person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part in order to carry out—

- (a) an act that constitutes an offence under the law of the State and within the scope of, and as defined in, any treaty that is listed in the annex to the Terrorist Financing Convention, or
- (b) an act (other than one referred to in *paragraph (a)*)—
 - (i) that is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, and
 - (ii) the purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act.

(2) Subject to *subsections (6) and (7)*, a person who attempts to commit an offence under *subsection (1)* is guilty of an offence.

(3) A person is guilty of an offence if the person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part—

- (a) for the benefit or purposes of a terrorist group as defined in *section 4*, or

- (b) in order to carry out an act (other than one referred to in paragraph (a) or (b) of subsection (1)) that is an offence under section 6.
- (4) A person who attempts to commit an offence under subsection (3) is guilty of an offence.
- (5) An offence may be committed under subsection (1) or (3) whether or not the funds are used to carry out an act referred to in subsection (1) or (3)(b), as the case may be.
- (6) Subsections (1) and (2) apply to an act committed outside the State if the act—
- (a) is committed on board an Irish ship,
 - (b) is committed on an aircraft registered in or operated by the State,
 - (c) is committed by a citizen of Ireland or by a stateless person habitually resident in the State,
 - (d) is directed towards or results in the carrying out of an act referred to in subsection (1) in the State or against a citizen of Ireland,
 - (e) is directed towards or results in the carrying out of an act referred to in subsection (1) against a State or Government facility of the State abroad, including an embassy or other diplomatic or consular premises of the State, or
 - (f) is directed towards or results in the carrying out of an act referred to in subsection (1) in an attempt to compel the State to do or abstain from doing any act.
- (7) Subsections (1) and (2) apply also to an act committed outside the State in circumstances other than those referred to in subsection (6), but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings referred to in section 43(2) for an offence in respect of that act except as authorised by section 43(3).
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 20 years or both.

14.—(1) If satisfied on application *ex parte* by a member of the Garda Síochána that a person is in possession or control of funds that are being used or may be intended for use in committing, or facilitating the commission of, an offence under section 6 or 13, the High Court may make an order prohibiting the person, any other specified person or any other person having notice of the order from—

Interim order
freezing certain
funds.

- (a) disposing of or otherwise dealing with all or, where appropriate, a specified part of the funds during such period,

not exceeding 40 days, as may be specified by the Court,
or

(b) diminishing the value of the funds during that period.

(2) An interim order—

(a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

(b) shall provide for notice of the order to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain their whereabouts.

(3) On application by the respondent or any other person claiming ownership of the funds specified in an interim order that is in force, the Court may discharge or, as may be appropriate, vary the order if satisfied that those funds or a part of them are not funds that are being used or may be intended for use in committing or facilitating the commission of an offence under *section 6* or *13*.

(4) On application by a member of the Garda Síochána or any other person, the Court may vary an interim order to such extent as may be necessary to permit—

(a) the enforcement of any order of a court for the payment by the respondent of any sum, including any sum in respect of costs,

(b) the recovery by a county registrar or sheriff of income tax due by the respondent pursuant to a certificate issued by the Collector-General under section 962 of the Taxes Consolidation Act 1997, together with the fees and expenses provided for in that section, or

(c) the institution of proceedings for, or relating to, the recovery of any other sum owed by the respondent.

(5) *Subsection (4)* is not to be construed to limit the generality of section 6 of the Act of 1996 as made applicable by *section 20* of this Act.

(6) On application at any time by a member of the Garda Síochána, the Court shall discharge an interim order.

(7) Subject to *subsections (3), (6) and (11)*, an interim order continues in force until the end of the period specified by the Court and then lapses unless an application for an interlocutory order in respect of any of the funds concerned is brought during that period.

(8) If an application for an interlocutory order is brought within the period allowed under *subsection (7)*, the interim order lapses on—

(a) the determination of the application,

(b) the expiry of the ordinary time for bringing an appeal against the determination, or

(c) if such appeal is brought, the determination or abandonment of the appeal or any further appeal or the expiry of the ordinary time for bringing any further appeal,

whichever is the latest.

(9) Notice of an application under *subsection (3)* for the discharge or variation of an interim order shall be given by the respondent or other person making the application to—

- (a) the member of the Garda Síochána who applied for the interim order, and
- (b) such other (if any) persons as the Court may direct.

(10) Notice of an application under *subsection (4)* for the variation, or under *subsection (6)* for the discharge, of an interim order shall be given by the applicant to—

- (a) the respondent unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts, and
- (b) such other (if any) persons as the Court may direct.

(11) Where a forfeiture order, or a confiscation order, under the Act of 1994 relates to any funds that are the subject of an interim order that is in force—

- (a) the interim order is discharged, if it relates only to the funds that are the subject of the forfeiture order or the confiscation order, as the case may be, and
- (b) the interim order is varied by the exclusion from it of the other funds, if it relates to other funds in addition to the funds that are the subject of the forfeiture order or the confiscation order, as the case may be.

15.—(1) If, on application by a member of the Garda Síochána, it appears to the High Court on evidence tendered by the applicant that a person is in possession or control of funds that were being used or may be intended for use in committing or facilitating the commission of an offence under *section 6* or *13*, the Court shall, subject to *subsection (2)* of this section, make an order prohibiting the respondent, any other specified person or any other person having notice of the order from— Interlocutory order.

- (a) disposing of or otherwise dealing with all or, where appropriate, a specified part of the funds, or
- (b) diminishing the value of the funds,

unless the Court is satisfied, on evidence tendered by the respondent or any other person, that the funds are not being used or intended for use in committing or facilitating the commission of an offence under *section 6* or *13*.

(2) The Court shall not make an interlocutory order if it is satisfied that there would be a serious risk of injustice.

(3) Evidence tendered by the applicant for an interlocutory order may consist of or include evidence admissible by virtue of *section 18*.

- (4) An interlocutory order—
- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and
 - (b) shall provide for notice of the order to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain their whereabouts.
- (5) On application by the respondent or any other person claiming ownership of the funds concerned, the Court may discharge or, as may be appropriate, vary an order that is in force if satisfied that—
- (a) the funds concerned, or a part of them, are not funds that are being used or may be intended for use in committing or facilitating the commission of an offence under *section 6* or *13*, or
 - (b) the order causes any other injustice.
- (6) On application by a member of the Garda Síochána or any other person, the Court may vary an interlocutory order to such extent as may be necessary to permit—
- (a) the enforcement of any order of a court for the payment by the respondent of any sum, including any sum in respect of costs,
 - (b) the recovery by a county registrar or sheriff of income tax due by the respondent pursuant to a certificate issued by the Collector-General under section 962 of the Taxes Consolidation Act 1997, together with the fees and expenses provided for in that section, or
 - (c) the institution of proceedings for, or relating to, the recovery of any other sum owed by the respondent.
- (7) *Subsection (6)* is not to be construed to limit the generality of section 6 of the Act of 1996 as made applicable by *section 20* of this Act.
- (8) On application at any time by a member of the Garda Síochána, the Court shall discharge an interlocutory order.
- (9) Subject to *subsections (5), (6) and (12)*, an interlocutory order continues in force until—
- (a) the determination of an application for a disposal order in relation to the funds concerned,
 - (b) the expiry of the ordinary time for bringing an appeal from that determination, or
 - (c) if such an appeal is brought, the determination or abandonment of the appeal or any further appeal or the expiry of the ordinary time for bringing any further appeal,
- whichever is the latest.
- (10) Notice of an application under *subsection (1)* for an interlocutory order or of an application under *subsection (6)* for the variation,

or under *subsection (8)* for the discharge, of an interlocutory order shall be given by the applicant to—

- (a) the respondent unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts, and
- (b) any other person to whom the Court directs that notice be given.

(11) Notice of an application under *subsection (5)* to discharge or vary an interlocutory order shall be given by the respondent or other person making the application to—

- (a) the member of the Garda Síochána who applied for the interlocutory order, and
- (b) such other (if any) persons as the Court may direct.

(12) Where a forfeiture order, or a confiscation order, under the Act of 1994 relates to any funds that are the subject of an interlocutory order that is in force—

- (a) the interlocutory order is discharged, if it relates only to the funds that are the subject of the forfeiture order or the confiscation order, as the case may be, and
- (b) the interlocutory order is varied by the exclusion from it of the other funds, if it relates to other funds in addition to the funds that are the subject of the forfeiture order or the confiscation order, as the case may be.

16.—(1) Subject to *subsection (2)*, where an interlocutory order has been in force for not less than 7 years in relation to funds, the High Court may, on application by a member of the Garda Síochána, make an order directing that all or, if appropriate, a specified part of the funds be transferred, subject to such terms and conditions as the Court may specify, to the Minister for Finance or such other person as the Court may determine. Disposal order.

(2) Subject to *subsections (6)* and *(8)*, the Court shall make a disposal order in relation to any funds that are the subject of an application under *subsection (1)* unless it is satisfied that the funds are not funds that had been used or were intended for use in committing or facilitating the commission of an offence under *section 6* or *13*.

(3) The applicant shall give notice of an application under this section to—

- (a) the respondent unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts, and
- (b) such other (if any) persons as the Court may direct.

(4) A disposal order operates to deprive the respondent of any rights to the funds to which the order relates and on the making of the order the funds are transferred to the Minister for Finance or other person determined by the Court.

(5) The Minister for Finance may dispose of any funds transferred to him or her under this section and any proceeds of the disposition

and any money transferred to that Minister under this section shall be paid into and disposed of by him or her for the benefit of the Exchequer.

(6) In proceedings under *subsection (1)*, before deciding whether to make a disposal order, the Court shall give any person claiming ownership of the funds an opportunity to be heard by the Court and to show cause why the order should not be made.

(7) On application by the respondent or, if the respondent's whereabouts cannot be ascertained, on the Court's own initiative, the Court may, if it considers it appropriate to do so in the interests of justice, adjourn the hearing of an application under *subsection (1)* for such period not exceeding 2 years as it considers reasonable.

(8) The Court shall not make a disposal order if it is satisfied that there would be a serious risk of injustice.

Ancillary orders
and provision in
relation to certain
profits or gains, etc.

17.—(1) At any time while an interim or interlocutory order is in force, the High Court may, on application by a member of the Garda Síochána, make such orders as it considers necessary or expedient to enable the interim order or interlocutory order to have full effect.

(2) The applicant shall give notice of an application under this section to—

(a) the respondent unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts, and

(b) such other (if any) persons as the Court may direct.

(3) An interim order, an interlocutory order or a disposal order may be expressed to apply to—

(a) any profit, gain or interest,

(b) any dividend or other payment, or

(c) any other funds,

payable or arising, after the making of the order, in connection with any other funds to which the order relates.

Evidence and
proceedings relating
to interim and other
orders.

18.—(1) A statement made by a member of the Garda Síochána—

(a) in proceedings under *section 14*, on affidavit or, if the High Court so directs, in oral evidence, or

(b) in proceedings under *section 15*, in oral evidence,

that he or she believes that the respondent is in possession or control of funds that are being used, or may be intended for use, in committing or facilitating the commission of an offence under *section 6* or *13* is evidence of the matter if the Court is satisfied that there are reasonable grounds for that belief.

(2) The standard of proof applicable in civil proceedings is the standard required to determine any question arising under *section 14, 15, 16, 17, 19* or *20*.

(3) Proceedings under *section 14* in relation to an interim order shall be heard otherwise than in public and any proceedings under *section 15, 16, 17 or 19* may, if the respondent or any other party to the proceedings (other than the applicant) so requests and the Court considers it proper, be heard otherwise than in public.

(4) The Court may, if it considers it appropriate to do so, prohibit the publication of such information as it may determine in relation to proceedings under *section 14, 15, 16, 17 or 19*, including information relating to—

- (a) applications for, the making or refusal of and the contents of orders under any of those sections, and
- (b) the persons to whom those orders relate.

19.—(1) An application to the High Court for an order under this section may be made where— Compensation.

- (a) an interim order is discharged or lapses and an interlocutory order in relation to the matter is not made or, if made, is discharged (otherwise than pursuant to *section 14(11)*),
- (b) an interlocutory order is discharged (otherwise than pursuant to *section 15(12)*) or lapses and a disposal order in relation to the matter is not made or, if made, is discharged, or
- (c) an interim order or an interlocutory order is varied (otherwise than pursuant to *section 14(11)* or *15(12)*) or a disposal order is varied on appeal.

(2) On application under *subsection (1)* by a person who satisfies the Court that—

- (a) the person is the owner of funds to which—
 - (i) an interim order referred to in *subsection (1)(a)* related,
 - (ii) an interlocutory order referred to in *subsection (1)(b)* related,
 - (iii) an order referred to in *subsection (1)(c)* had related, but by reason of it being varied by a court, has ceased to relate,

and
- (b) the funds are not being used or intended for use in committing or facilitating the commission of an offence under *section 6 or 13*,

the Court may award to the person such (if any) compensation payable by the Minister for Finance as it considers just in the circumstances in respect of any loss incurred by the person by reason of the order concerned.

(3) The Minister for Finance shall be given notice of, and be entitled to be heard in, any proceedings under this section.

Application of
certain provisions of
Act of 1996.

20.—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

- (a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;
- (b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in *section 12* of this Act;
- (c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

Amendment of
section 3 of Act of
1994.

21.—Section 3 of the Act of 1994 is amended as follows:

- (a) in subsection (1) by inserting the following:

“‘Act of 2005’ means the *Criminal Justice (Terrorist Offences) Act 2005*;”;

- (b) in subsection (1) by substituting the following for the definition of “confiscation order”:

“‘confiscation order’ means an order made under section 4(4), 8A(5) or 9(1) of this Act;”;

- (c) in subsection (1) by substituting the following for the definition of “defendant”:

“‘defendant’ means, for the purposes of any provision of this Act relating to confiscation, and subject to section 23(2)(a) of this Act, a person against whom proceedings for the relevant drug trafficking offence, offence of financing terrorism or other offence have been instituted;”;

- (d) in subsection (1) by inserting the following definitions:

“‘funds’ has the meaning given by *section 12* of the *Act of 2005*;”;

“‘funds subject to confiscation’ has the meaning given by section 8A(2) of this Act;”;

“‘offence of financing terrorism’ means an offence under *section 13* of the *Act of 2005*;”;

“‘proceeds’, in relation to an offence of financing terrorism, means any funds derived from or obtained, directly or indirectly, through the commission of that offence, including payments and rewards;”;

- (e) in subsection (1) by substituting the following for the definition of “property”:

“‘property’ includes money and all other property, real or personal, heritable or moveable, including choses-in-action and other intangible or incorporeal property and, in relation to an offence of financing terrorism, includes funds;”;

- (f) in subsection (1) by inserting the following definition:

“‘value of funds subject to confiscation’ has the meaning given by section 8B(1) of this Act;”;

- (g) by inserting the following after subsection (9):

“(9A) For the purposes of the provisions of this Act relating to an offence of financing terrorism, a gift (including a gift made before the commencement of section 8A of this Act) is caught by this Act if—

- (a) it was made by the defendant at any time since the beginning of a period of 6 years ending when proceedings in respect of that offence were instituted against the defendant, or
- (b) it was made by the defendant at any time and was a gift of property—
- (i) which was received by the defendant in connection with an offence of financing terrorism committed by the defendant or another person, or
- (ii) which in whole or in part directly or indirectly represented in the defendant’s hands funds received by the defendant in connection with an offence of financing terrorism.”;

- (h) in subsection (16)(g) by substituting “an application under section 7, 8D or 13 of this Act” for “an application under section 7 or 13 of this Act”;

- (i) in subsection (16)(h) by substituting “an application under section 8, 8E or 18 of this Act” for “an application under section 8 or 18 of this Act”.

22.—Part II of the Act of 1994 is amended by inserting the following after section 8:

Amendment of Part II of Act of 1994 — new sections 8A to 8E.

“Confiscation orders relating to offence of financing terrorism.

8A.—(1) Where a person has been sentenced or otherwise dealt with by a court in respect of one or more offences of financing terrorism of which that person has been convicted, the Director of Public Prosecutions may make, or cause to be made, an application to the court to determine whether the convicted person holds funds subject to confiscation.

(2) For the purposes of this Act, funds subject to confiscation are—

(a) funds used or allocated for use in connection with an offence of financing terrorism, or

(b) funds that are the proceeds of such an offence.

(3) An application under subsection (1) of this section may be made at the conclusion of the proceedings at which the person is sentenced or otherwise dealt with or at a later stage in the proceedings.

(4) An application under subsection (1) of this section shall not be made unless it appears to the Director of Public Prosecutions that the person in question holds funds subject to confiscation.

(5) If the court determines that the person in question holds funds subject to confiscation, the court shall—

(a) determine in accordance with section 8C of this Act the amount to be recovered in that person's case by virtue of this section, and

(b) make a confiscation order under this section requiring the person to pay that amount.

(6) The standard of proof applicable in civil proceedings is the standard required to determine a question arising under this Act as to—

(a) whether a person holds funds subject to confiscation, and

(b) the amount to be recovered in that person's case by virtue of this section.

Assessing the value of funds subject to confiscation.

8B.—(1) For the purposes of this Act, the value of the funds that are subject to confiscation is the aggregate of the values of those funds held by the defendant.

(2) For the purpose of assessing the value of funds subject to confiscation, the court shall, subject to subsection (3) of this section, make the following assumptions:

(a) that any funds appearing to the court—

(i) to have been held by the defendant at any time since the conviction, or

(ii) to have been transferred to the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against the defendant,

were received or collected by the defendant, at the earliest time at which the defendant appears to the court to have held them, for use (whether or not used) in connection with the offence of financing terrorism or as the proceeds of such offence;

(b) that any expenditure of the defendant since the beginning of that period was met out of funds subject to confiscation;

(c) that the funds subject to confiscation are held by the defendant free of any other interests in them.

(3) The court shall not make an assumption set out in subsection (2) of this section if—

(a) that assumption is shown to be incorrect in the case of the defendant, or

(b) the court is satisfied that there would be a serious risk of injustice in that case were the assumption made.

(4) Where the court does not apply one or more of the assumptions set out in subsection (2) of this section, it shall state its reasons.

(5) For the purpose of assessing the value of funds subject to confiscation in a case where a confiscation order has previously been made against the defendant, the court shall not take into account any of that defendant's funds subject to confiscation that are shown to the court to have been taken into account in determining the amount to be recovered under the confiscation order.

Amount to be recovered under a confiscation order made under section 8A.

8C.—(1) Subject to subsection (2) of this section, where a confiscation order has been made under section 8A of this Act, the amount to be recovered under the order shall be equal to the amount assessed by the court to be the value of the defendant's funds subject to confiscation.

(2) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the funds subject to confiscation, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

Re-assessment of whether defendant holds funds subject to confiscation.

8D.—(1) This section applies where an application has previously been made to the court under section 8A of this Act and the court has determined that the defendant did not hold funds subject to confiscation.

(2) The Director of Public Prosecutions may make, or cause to be made, an application to the court for it to consider evidence—

(a) which was not considered by the court in making the determination referred to in subsection (1) of this section, and

(b) which, had it been considered, the Director of Public Prosecutions believes would have led the court to determine that the defendant held funds subject to confiscation.

(3) If, having considered the evidence, the court is satisfied that, had that evidence been available to it, it would have determined that the defendant held funds subject to confiscation, the court—

(a) shall—

(i) make a fresh determination of whether the defendant holds funds subject to confiscation, and

(ii) make a determination under section 8A(5) of this Act of the amount to be recovered by virtue of that section,

and

(b) may make a confiscation order under section 8A(5) of this Act.

(4) In considering an application under this section, the court may take into account any funds held by the defendant on or after the date of the determination referred to in subsection (1) of this section, but only if the Director of Public Prosecutions shows that the funds relate to an offence of financing terrorism committed on or before that date by the defendant or another person.

(5) In considering any evidence under this section relating to any funds to which subsection (4) applies, the court shall not make the assumptions which would otherwise be required under section 8B of this Act.

(6) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the defendant was convicted.

Revised
assessment of
funds subject to
confiscation.

8E.—(1) This section applies where a court has made a determination (referred to in this section as ‘the current determination’) under section 8A(5) of this Act of the amount to be recovered in a particular case by virtue of that section.

(2) Where the Director of Public Prosecutions is of the opinion that the real value of the defendant's funds subject to confiscation was greater than their assessed value, the Director of Public Prosecutions may make, or cause to be made, an application to the court for the evidence on which that opinion was formed to be considered by the court.

(3) In subsections (2) and (4) of this section—

'assessed value' means the value of the defendant's funds subject to confiscation as assessed by the court under section 8C(1) of this Act;

'real value' means the value of the defendant's funds subject to confiscation which relate to an offence of financing terrorism committed either in the period by reference to which the current determination was made or in any earlier period.

(4) If, having considered the evidence, the court is satisfied that the real value of the defendant's funds subject to confiscation is greater than their assessed value (whether because their real value was higher at the time of the current determination than was thought or because the value of the funds subject to confiscation has subsequently increased), the court shall make a fresh determination under section 8A(5) of this Act of the amount to be recovered by virtue of that section.

(5) Any determination under section 8A(5) of this Act by virtue of this section shall be by reference to the amount that might be realised at the time the determination is made.

(6) For any determination under section 8A(5) of this Act by virtue of this section, section 8B(5) of this Act shall not apply in relation to any of the defendant's funds subject to confiscation that were taken into account in respect of the current determination.

(7) In relation to a determination under section 8A(5) of this Act by virtue of this section—

(a) section 3(2) of this Act shall have effect as if for 'a confiscation order is made against the defendant' there were substituted 'of the determination',

(b) sections 3(8), 10(5)(a) and 12(4) of this Act shall have effect as if for 'confiscation order' there were substituted 'determination', and

(c) section 8C(2) of this Act shall have effect as if for 'confiscation order is made' there were substituted 'determination is made'.

(8) The court may take into account any funds held by the defendant on or after the date of the current determination, but only if the Director of Public Prosecutions shows that the funds relate to an offence of financing terrorism committed before that date by the defendant or another person.

(9) In considering any evidence relating to any funds to which subsection (8) applies, the court shall not make the assumptions which would otherwise be required by section 8B of this Act.

(10) If, as a result of making the fresh determination required by subsection (4) of this section, the amount to be recovered exceeds the amount set by the current determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current determination such greater amount as it thinks just in all the circumstances of the case.

(11) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the defendant was convicted.”.

Amendment of section 9 of Act of 1994.

23.—Section 9 of the Act of 1994 is amended as follows:

- (a) in subsection (1) by substituting “, other than a drug trafficking offence or an offence of financing terrorism,” for “, other than a drug trafficking offence,”,
- (b) in subsection (2) by substituting “(not being a drug trafficking offence or an offence of financing terrorism)” for “(not being a drug trafficking offence)”, and
- (c) in subsection (4) by substituting “, other than a drug trafficking offence or an offence of financing terrorism,” for “other than a drug trafficking offence”.

Amendment of section 10 of Act of 1994.

24.—Section 10 of the Act of 1994 is amended as follows:

- (a) by substituting the following for subsection (1) (amended by section 27 of the Criminal Justice Act 1999):

“(1) Where a defendant accepts to any extent an allegation in a statement that—

- (a) is tendered by or on behalf of the Director of Public Prosecutions to a court that is engaged in a determination under section 4 of this Act as to whether a person has benefited from drug trafficking or as to any amount to be recovered by virtue of that section or to a court that is considering an application under section 7, 8, 8A, 8D, 8E or 9 of this Act, and

(b) concerns any matter relevant—

(i) to the determination of whether the defendant—

(I) in the case of a conviction for a drug trafficking offence, has benefited from drug trafficking,

(II) in the case of a conviction for an offence of financing terrorism, holds funds subject to confiscation, or

(III) in the case of a conviction for an offence other than a drug trafficking offence or an offence of financing terrorism, has benefited as mentioned in section 9(4) of this Act,

or

(ii) to the assessment of the value of the defendant's proceeds of drug trafficking, the value of the funds subject to confiscation or the value of the defendant's benefits as mentioned in section 9(4) of this Act, as the case may be,

the court may, for the purposes of that determination or assessment, treat the defendant's acceptance as conclusive of the matters to which it relates.”;

(b) by substituting the following for subsection (4):

“(4) A defendant who fails in any respect to comply with a requirement under subsection (3) of this section may be treated for the purposes of this section as accepting every allegation in the statement other than—

(a) any allegation in respect of which the defendant has complied with the requirement, and

(b) any allegation that—

(i) in the case of a conviction for one or more drug trafficking offences, the defendant has benefited from drug trafficking or that any payment or reward was received by the defendant in connection with drug trafficking carried on by the defendant or another person,

(ii) in the case of a conviction for one or more offences of financing terrorism, the defendant holds funds subject to confiscation, or

- (iii) in the case of a conviction for one or more offences, other than a drug trafficking offence or an offence of financing terrorism, the defendant benefited from the offence or property was obtained from the defendant as a result of or in connection with the commission of an offence.”;

(c) by substituting the following for subsection (8):

“(8) No acceptance by the defendant under this section of an allegation that—

- (a) any payment or other reward was received by the defendant in connection with drug trafficking carried on by the defendant or another person,
- (b) the defendant holds funds subject to confiscation, or
- (c) the defendant has benefited from an offence other than a drug trafficking offence or an offence of financing terrorism,

shall be admissible in evidence in any proceedings for an offence.”.

Amendment of
section 11 of Act of
1994.

25.—Section 11(1) of the Act of 1994 (inserted by section 28 of the Criminal Justice Act 1999) is amended by substituting the following for paragraph (b):

“(b) an application has been made to a court under section 7, 8, 8A, 8D, 8E or 9 of this Act.”.

Amendment of
section 12 of Act of
1994.

26.—Section 12 of the Act of 1994 is amended as follows:

(a) in subsection (1) by substituting “(but not when considering whether to make such an order under section 4 or 8A of this Act)” for “(but not when considering whether to make an order under section 4 of this Act)”;

(b) in subsection (4) by substituting the following paragraphs for paragraph (b):

“(b) (in the case of a conviction for one or more offences of financing terrorism) the value of the defendant’s funds subject to confiscation, or

(c) (in the case of a conviction for an offence or offences other than a drug trafficking offence or an offence of financing terrorism) the value of the defendant’s benefit from the offence or offences in respect of which the order may be made.”.

27.—Section 13 of the Act of 1994 is amended as follows:

Amendment of
section 13 of Act of
1994.

(a) by substituting the following for subsection (2):

“(2) The High Court may exercise the powers of a court under section 4, 8A or 9 of this Act to make a confiscation order against the defendant in the case of a conviction for a drug trafficking offence, an offence of financing terrorism or an offence other than a drug trafficking offence or an offence of financing terrorism if—

- (a) the Director of Public Prosecutions asks the High Court to proceed under this section, and
- (b) the High Court is satisfied that the defendant has died or absconded.”;

(b) by substituting the following for subsection (4):

“(4) The High Court may exercise the powers of a court under section 4, 8A or 9 of this Act to make a confiscation order against the defendant if—

- (a) the relevant proceedings have been instituted in respect of a drug trafficking offence, an offence of financing terrorism or an offence other than a drug trafficking offence or an offence of financing terrorism,
- (b) the Director of Public Prosecutions asks the High Court to proceed under this section, and
- (c) the High Court is satisfied that the defendant has absconded.”;

(c) in subsection (6) by substituting the following for paragraph (a):

“(a) sections 5(2), 8B(2), 10(3) and 10(4) of this Act shall not apply.”.

28.—Section 17 of the Act of 1994 is amended as follows:

Amendment of
section 17 of Act of
1994.

(a) in subsection (2) by substituting the following for paragraph (a):

- “(a) the value of the defendant’s—
- (i) proceeds of drug trafficking,
 - (ii) funds subject to confiscation, or
 - (iii) benefit as mentioned in section 9(4) of this Act,

as the case may be, in the period by reference to which the determination in question was made (‘the original value’), or”;

(b) in subsection (2) by substituting the following for subparagraph (i):

“(i) may make a fresh determination of the value of the defendant’s—

(I) proceeds under section 4 of this Act, in the case of a drug trafficking offence,

(II) funds subject to confiscation under section 8A of this Act, in the case of an offence of financing terrorism, and

(III) benefit under section 9 of this Act, in the case of an offence other than a drug trafficking offence or an offence of financing terrorism, and”;

(c) by inserting the following after subsection (3):

“(3A) For any determination under section 8A of this Act by virtue of this section, section 8B(5) shall not apply in relation to any of the defendant’s funds subject to confiscation that were taken into account in determining the original value.”.

Amendment of
section 18 of Act of
1994.

29.—Section 18 of the Act of 1994 is amended by substituting the following for subsection (1):

“(1) This section shall have effect where the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of the person’s—

(a) proceeds of drug trafficking, in the case of a drug trafficking offence,

(b) funds subject to confiscation, in the case of an offence of financing terrorism, or

(c) benefit obtained from an offence other than a drug trafficking offence or an offence of financing terrorism.”.

Amendment of
section 23 of Act of
1994.

30.—Section 23 of the Act of 1994 is amended as follows:

(a) by substituting the following for subsection (1):

“(1) The powers conferred on the High Court by section 24 of this Act shall be exercisable—

(a) where—

(i) proceedings have been instituted in the State against the defendant for a drug trafficking offence, an offence of financing terrorism or an indictable offence (other than a drug trafficking offence or an offence of

financing terrorism) or an application has been made in respect of the defendant under section 7, 8, 8D, 8E, 13 or 18 of this Act,

- (ii) the proceedings or application have not been concluded, and
- (iii) either a confiscation order has been made or it appears to the Court that there are reasonable grounds for thinking that a confiscation order may be made in the proceedings or that, in the case of an application under section 7, 8, 8D, 8E, 13 or 18 of this Act, the Court will be satisfied as mentioned in section 7(3), 8(4), 8D(3), 8E(4), 13(2), 13(4) or 18(2) of this Act,

or

(b) where—

- (i) the Court is satisfied that proceedings are to be instituted against a person for a drug trafficking offence, an offence of financing terrorism or an offence in respect of which a confiscation order might be made under section 9 of this Act or that an application of a kind mentioned in paragraph (a)(i) of this subsection is to be made in respect of a person, and
- (ii) it appears to the Court that a confiscation order may be made in connection with the offence or that a court will be satisfied as mentioned in paragraph (a)(iii) of this subsection.”;

(b) in subsection (2) by substituting the following for paragraph (b):

“(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (1)(b)(i) of this section for a drug trafficking offence, an offence of financing terrorism or an offence in respect of which a confiscation order might be made under section 9 of this Act.”.

31.—Section 28(3)(a) of the Act of 1994 is amended by substituting the following for subparagraph (ii):

Amendment of
section 28 of Act of
1994.

“(ii) an application has been made in respect of the defendant under section 7, 8, 8D, 8E, 13 or 18 of this Act and has not been concluded, or”.

Amendment of
section 32 of Act of
1994.

32.—Section 32 of the Act of 1994 is amended as follows:

(a) by substituting the following for subsection (9A) (inserted by section 14 of the Criminal Justice (Miscellaneous Provisions) Act 1997):

“(9A) A designated body shall, in relation to the carrying on of its business, adopt measures to prevent and detect the commission of the following offences:

(a) an offence under section 31 of this Act;

(b) an offence of financing terrorism.”;

(b) in subsection (9B) (inserted by section 14 of the Criminal Justice (Miscellaneous Provisions) Act 1997) by substituting the following for paragraph (c):

“(c) the training of directors, other officers and employees for the purpose of enabling them to identify transactions which may relate to the commission of an offence under section 31 of this Act or an offence of financing terrorism, and the giving of instructions to them on how a director, other officer or employee should proceed once he or she has identified such a transaction.”.

Amendment of
section 46 of Act of
1994.

33.—Section 46 of the Act of 1994 is amended—

(a) in subsection (1) by inserting the following after paragraph (a):

“(aa) of recovering funds corresponding to funds subject to confiscation under this Act, or”;

and

(b) in subsection (5) by substituting “section 4, 8A or 9 of this Act” for “section 4 or 9 of this Act”.

Amendment of
section 47 of Act of
1994.

34.—Section 47(5) of the Act of 1994 is amended by inserting the following after paragraph (b):

“(bb) an offence of financing terrorism, or”.

Amendment of
section 55 of Act of
1994.

35.—Section 55 of the Act of 1994 is amended by substituting the following for subsection (2):

“(2) Section 63 of this Act shall have effect as if—

(a) references in that section to drug trafficking included any conduct which is an offence under the law of a country or territory outside the State and would constitute drug trafficking had the conduct occurred in the State,

- (b) references in that section to an offence of financing terrorism included any conduct which is an offence under the law of a country or territory outside the State and would constitute an offence of financing terrorism had the conduct occurred in the State or in the circumstances referred to in *section 13(6)* of the *Act of 2005*, and
- (c) references in that section to an offence in respect of which a confiscation order might be made under section 9 of this Act included any conduct which is an offence under the law of a country or territory outside the State and would constitute an offence in respect of which a confiscation order might be made under section 9 of this Act had the conduct occurred in the State.”.

36.—Section 57 of the Act of 1994 is amended as follows:

Amendment of
section 57 of Act of
1994.

(a) by substituting the following for subsection (1):

“(1) Any person or body to whom section 32 of this Act applies (including a director, officer or employee of that person or body) and who suspects that—

(a) an offence of financing terrorism, or

(b) an offence under section 31 or 32 of this Act,

in relation to the business of that person or body has been or is being committed shall report that suspicion to the Garda Síochána and to the Revenue Commissioners.”;

(b) by substituting the following for subsection (2):

“(2) A person who—

(a) is charged by law with the supervision of a person or body to whom section 32 of this Act applies, and

(b) suspects that an offence of financing terrorism or an offence under section 31 or 32 of this Act has been or is being committed by that person or body,

shall report that suspicion to the Garda Síochána and to the Revenue Commissioners.”;

(c) in subsection (7)(b) by substituting “in the investigation or prosecution of a drug trafficking offence, an offence of financing terrorism or an offence in respect of which a confiscation order might be made under section 9 of this Act” for “in the investigation or prosecution of a drug trafficking offence or an offence in respect of which a confiscation order might be made under section 9 of this Act”.

Amendment of
section 58 of Act of
1994.

37.—Section 58 of the Act of 1994 is amended as follows:

- (a) in subsection (1) by substituting “an investigation into drug trafficking, into whether a person holds funds subject to confiscation or into whether a person has benefited from an offence in respect of which a confiscation order might be made” for “an investigation into drug trafficking or into whether a person has benefited from an offence in respect of which a confiscation order might be made”, and
- (b) in subsection (2) by substituting “makes any disclosure which is likely to prejudice an investigation arising from a report into whether an offence of financing terrorism or an offence under section 31 or 32 of this Act has been committed shall be guilty of an offence” for “makes any disclosure which is likely to prejudice an investigation arising from a report into whether an offence under section 31 or 32 of this Act has been committed shall be guilty of an offence”.

Amendment of
section 61 of Act of
1994.

38.—Section 61(1A) of the Act of 1994 (inserted by section 17 of the Offences against the State (Amendment) Act 1998) is amended in paragraph (a) by substituting “, section 27A of the Firearms Act 1964 or *section 6* of the *Act of 2005*” for “or section 27A of the Firearms Act, 1964”.

Amendment of
section 63 of Act of
1994.

39.—Section 63 of the Act of 1994 is amended as follows:

- (a) by substituting the following for subsection (1):

“(1) A member of the Garda Síochána may apply to a judge of the District Court for an order under subsection (2) of this section in relation to any particular material, or material of a particular description, for the purpose of an investigation into any of the following matters:

- (a) drug trafficking;
- (b) the commission of an offence of financing terrorism;
- (c) the commission of an offence under section 31 of this Act;
- (d) whether a person has benefited from drug trafficking;
- (e) whether a person holds funds subject to confiscation;
- (f) whether a person has benefited from an offence in respect of which a confiscation order might be made under section 9 of this Act.”;

(b) in subsection (4) by substituting the following for paragraph (a):

- “(a) that there are reasonable grounds for suspecting that a specified person—
- (i) has carried on drug trafficking,
 - (ii) has committed an offence of financing terrorism,
 - (iii) has committed an offence under section 31 of this Act,
 - (iv) has benefited from drug trafficking,
 - (v) holds funds subject to confiscation, or
 - (vi) has benefited from an offence in respect of which a confiscation order might be made under section 9 of this Act.”.

40.—Section 64 of the Act of 1994 is amended as follows:

Amendment of
section 64 of Act of
1994.

(a) by substituting the following for subsection (1):

“(1) A member of the Garda Síochána may apply to a judge of the District Court for a warrant under this section in relation to specified premises for the purposes of an investigation into any of the following matters:

- (a) drug trafficking;
- (b) the commission of an offence of financing terrorism;
- (c) the commission of an offence under section 31 of this Act;
- (d) whether a person has benefited from drug trafficking;
- (e) whether a person holds funds subject to confiscation;
- (f) whether a person has benefited from an offence in respect of which a confiscation order might be made under section 9 of this Act.”;

(b) in subsection (3) by substituting the following for paragraph (a):

- “(a) that there are reasonable grounds for suspecting that a specified person—
- (i) has carried on drug trafficking,
 - (ii) has committed an offence of financing terrorism,

- (iii) has committed an offence under section 31 of this Act,
 - (iv) has benefited from drug trafficking,
 - (v) holds funds subject to confiscation, or
 - (vi) has benefited from an offence in respect of which a confiscation order might be made under section 9 of this Act, and”;
- (c) in subsection (4) by substituting the following for paragraphs (a) and (b):

“(a) that there are reasonable grounds for suspecting that a specified person—

- (i) has carried on drug trafficking,
- (ii) has committed an offence of financing terrorism,
- (iii) has committed an offence under section 31 of this Act,
- (iv) has benefited from drug trafficking,
- (v) holds funds subject to confiscation, or
- (vi) has benefited from an offence in respect of which a confiscation order might be made under section 9 of this Act, and

(b) that there are reasonable grounds for suspecting that there is on the premises material that—

- (i) relates to the specified person or to—
 - (I) drug trafficking,
 - (II) an offence of financing terrorism,
 - (III) an offence under section 31 of this Act, or
 - (IV) an offence in respect of which a confiscation order might be made under section 9 of this Act,

and

- (ii) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
- (iii) cannot be particularised at the time of the application, and”.

41.—Section 65(1) of the Act of 1994 is amended by substituting “If proceedings are instituted against a person for a drug trafficking offence, an offence of financing terrorism, an offence in respect of which a compensation order might be made under section 9 of this Act, or for more than one of any of those offences,” for “If proceedings are instituted against a person for a drug trafficking offence or offences or for an offence or offences in respect of which a confiscation order might be made under section 9 of this Act”.

Amendment of
section 65 of Act of
1994.

42.—(1) This section applies to acts—

Power to make
regulations.

- (a) that are adopted by the institutions of the European Communities before or after the commencement of this section in accordance with the treaties of those Communities, and
- (b) that, in the opinion of the Minister for Finance, are for the purpose of, or will contribute to, combating terrorism through the adoption of specific restrictive measures, directed at persons, groups or entities, for the identification, detection, freezing or seizure of their assets of any kind.

(2) The Minister for Finance may make regulations for enabling provisions of acts to which this section applies to have full effect, including regulations—

- (a) requiring the disclosure or reporting of information for the identification or detection of assets referred to in *subsection (1)(b)*, and
- (b) respecting the freezing or seizure of such assets or the imposition of other restrictive measures referred to in *subsection (1)(b)*.

(3) A person who contravenes a requirement of a regulation made under *subsection (2)* is guilty of an offence.

(4) A person guilty of an offence under *subsection (3)* is liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to—
 - (i) a fine not exceeding the greater of €10,000,000 or twice the value of the assets in respect of which the offence was committed,
 - (ii) imprisonment for a term not exceeding 20 years, or
 - (iii) both such fine and such imprisonment.

(5) Where after being convicted of an offence under *subsection (3)* a person continues to contravene the requirement to which the offence relates, the person is guilty of a further offence on every day on which the contravention continues and for each such offence is liable to whichever of the following penalties is applicable:

(a) on summary conviction to a fine not exceeding €1,000, if the person was convicted of the offence under *subsection (3)* on summary conviction;

(b) on conviction on indictment to a fine not exceeding €100,000, if the person was convicted of the offence under *subsection (3)* on indictment.

(6) The Minister for Finance may make regulations providing for such incidental, supplementary and consequential provisions as appear to that Minister to be necessary for giving effect to regulations under *subsection (2)*.

(7) A person who contravenes a requirement of a regulation made under *subsection (6)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(8) Where after being convicted of an offence under *subsection (7)* a person continues to contravene the requirement to which the offence relates, the person is guilty of a further offence on every day on which the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €1,000.

PART 5

MISCELLANEOUS MATTERS

Proceedings relating to offences committed outside the State.

43.—(1) Proceedings for an offence under *section 6, 9, 10, 11* or *13(1)* or *(2)* in relation to an act committed outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

(2) Where a person is charged with an offence referred to in *subsection (1)*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

(3) The Director of Public Prosecutions may take, or consent to the taking of, further proceedings against a person for an offence in respect of an act to which *section 6(1), 9(1)* or *(2), 10(1), (2)* or *(3), 11(1)* or *(2)* or *13(1)* or *(2)* applies and that is committed outside the State in the circumstances referred to in *section 6(3), 9(4), 10(5), 11(4)* or *13(7)* respectively if satisfied—

(a) that—

(i) a request for that person's surrender for the purpose of trying him or her for an offence in respect of that act has been made under Part II of the Extradition Act 1965 by—

(I) in the case of an offence in respect of an act to which *section 6(1)* applies, any state, and

(II) in the case of an offence in respect of an act to which *section 9(1)* or *(2), 10(1), (2)* or *(3), 11(1)* or *(2)* or *13(1)* or *(2)* applies, a state party to the applicable instrument and exercising jurisdiction in accordance with its relevant provision,

and

(ii) the request has been finally refused (whether as a result of a decision of the court or otherwise),

or

(b) that—

(i) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of that act,

(ii) except in the case of an act to which *section 6(1)* applies, jurisdiction is being exercised in accordance with the relevant provision of the applicable instrument, and

(iii) a final determination has been made that the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned,

or

(c) that, because of special circumstances (including, but not limited to, the likelihood of a refusal referred to in *paragraph (a)(ii)* or a determination referred to in *paragraph (b)(iii)*), it is expedient that proceedings be taken against the person for an offence under the law of the State in respect of the act.

(4) In *subsection (3)*—

“applicable instrument” means—

(a) in relation to an act to which *section 9(1)* or *(2)* applies, the Hostage Convention as defined in *section 8*,

(b) in relation to an act to which *section 10(1)*, *(2)* or *(3)* applies, the Terrorist Bombing Convention as defined in *section 8*,

(c) in relation to an act to which *section 11(1)* or *(2)* applies, the Internationally Protected Persons Convention as defined in *section 8*, and

(d) in relation to an act to which *section 13(1)* or *(2)* applies, the Terrorist Financing Convention as defined in *section 12*;

“European arrest warrant” and “issuing state” have the meanings given by *section 2* of the European Arrest Warrant Act 2003;

“relevant provision” means—

(a) in relation to the Hostage Convention, Article 5(1),

(b) in relation to the Terrorist Bombing Convention, Article 6(1) or (2),

(c) in relation to the Internationally Protected Persons Convention, Article 3(1), and

(d) in relation to the Terrorist Financing Convention, Article 7(1) or (2).

Evidence in proceedings under the Act.

44.—(1) Where in any proceedings relating to an offence under this Act a question arises as to whether—

- (a) a person is an internationally protected person,
- (b) a facility is a State or Government facility of the State abroad, or
- (c) an organisation is an international organisation or an international organisation of an intergovernmental character,

a certificate that is signed by the Minister for Foreign Affairs, or by a person authorised by that Minister, and that states any fact relating to that question is evidence of the fact unless the contrary is shown.

(2) In any proceedings relating to an offence under this Act—

- (a) a certificate that is signed by an officer of the Department of Foreign Affairs and states that—
 - (i) a passport was issued by the Department to that person on a specified date, and
 - (ii) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date the offence is alleged to have been committed, unless the contrary is shown,

- (b) a certificate that is signed by the Attorney General, or by a person authorised by him or her, as to his or her opinion in relation to a matter mentioned in *section 6(6)* is evidence of that opinion, unless the contrary is shown, and
- (c) a certificate that is signed by the Director of Public Prosecutions or by a person authorised by that Director and that states any of the matters specified in *paragraph (a), (b) or (c) of section 43(3)* is evidence of the facts stated in the certificate, unless the contrary is shown.

(3) A document purporting to be a certificate under *subsection (1) or (2)* is deemed, unless the contrary is shown—

- (a) to be such a certificate,
- (b) to have been signed by the person purporting to have signed it, and
- (c) in the case of certificate signed with the authority of the Minister for Foreign Affairs, the Attorney General or the Director of Public Prosecutions, to have been signed in accordance with the authorisation.

Liability for offences by bodies corporate.

45.—(1) Where a body corporate commits an offence under this Act and the offence is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of a person who, when the offence was committed—

(a) was a director, manager, secretary or other officer of that body, or

(b) purported to act in any such capacity,

that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished accordingly.

(2) A person may be proceeded against for an offence referred to in *subsection (1)* whether or not the body corporate has been proceeded against or convicted of the offence committed by that body.

(3) Where the affairs of a body corporate are managed by its members, *subsections (1) and (2)* apply in relation to the acts and defaults of a member in connection with the member's management functions as if the member were a director or manager of the body corporate.

46.—A person who has been acquitted or convicted of an offence outside the State shall not be proceeded against for an offence under this Act consisting of the acts that constituted the offence of which that person was so acquitted or convicted. Double jeopardy.

47.—The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of money provided by the Oireachtas. Expenses.

PART 6

AMENDMENT OF OTHER ACTS

48.—Section 21(2) of the Act of 1939 is amended—

Amendment of section 21 of Act of 1939.

(a) in paragraph (a) by substituting—

(i) “€3,000” for “fifty pounds”, and

(ii) “12 months” for “three months”,

and

(b) in paragraph (b) by substituting “a fine or imprisonment for a term not exceeding 8 years or both” for “imprisonment for a term not exceeding 7 years”.

49.—The Act of 1939 is amended by inserting the following after section 21:

Amendment of Act of 1939 — new section 21A.

“Offence of providing assistance to an unlawful organisation.

21A.—(1) A person who knowingly renders assistance (including financial assistance) to an unlawful organisation, whether directly or indirectly, in the performance or furtherance of an unlawful object is guilty of an offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for

a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 8 years or both.”.

Amendment of section 22 of Act of 1939.

50.—Section 22(a) of the Act of 1939 is amended by substituting “all the property (including money and all other property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property, including funds as defined in section 12 of the *Criminal Justice (Terrorist Offences) Act 2005* of such organisation” for “all the property (whether real, chattel real, or personal and whether in possession or in action) of such organisation”.

Amendment of Act of 1939 — new sections 22A to 22I.

51.—The Act of 1939 is amended by inserting the following after section 22:

“Definitions for, and operation of, sections 22B to 22I.

22A.—(1) For the purposes of sections 22B to 22I—

‘disposal order’ means an order under section 22C;

‘interim order’ means an order made under section 22B;

‘Minister’ means Minister for Justice, Equality and Law Reform;

‘property’ does not include moneys held in a bank;

‘respondent’ means—

(a) a person in respect of whom an application for an interim order has been made, or

(b) a person in respect of whom an interim order has been made,

and includes a person who, but for this Act, would become entitled on the death of a person referred to in paragraph (a) or (b) to any property to which such an order relates (being an order that is in force and is in respect of that person).

(2) Sections 22B to 22I shall not be construed to limit the generality of section 22.

Interim order respecting specified property.

22B.—(1) The Minister may apply *ex parte* to the High Court for an interim order under subsection (2) in respect of specified property where the Minister is of the opinion that it—

(a) is the property of an unlawful organisation, whether or not the property is

in the possession or control of that organisation, and

(b) is forfeited to and vested in the Minister by virtue of section 22.

(2) On application under subsection (1), the Court may issue an interim order prohibiting any of the following from disposing of or otherwise dealing with the property specified in the order or from diminishing its value:

(a) any person in possession or control of the property;

(b) any person having notice of the order;

(c) any other person specified in the order.

(3) An interim order—

(a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

(b) shall provide for notice of the order to be given to—

(i) any person named in the order, and

(ii) any other person who is or appears to be affected by it, unless the Court is satisfied that it is not reasonably possible to ascertain the person's whereabouts.

(4) On application by the respondent or any other person claiming ownership of any property specified in an interim order that is in force under this section, the Court may discharge or vary the order, as it considers appropriate, if it is shown to the Court's satisfaction that the property is not the property of an unlawful organisation.

(5) On application at any time by the Minister, the Court shall discharge an interim order.

(6) Subject to subsections (4) and (5), an interim order continues in force until the expiry of 12 months from the date of its making and then lapses, unless an application for a disposal order in respect of any property specified in the interim order is brought during that period.

(7) If an application for a disposal order is brought within the period allowed under subsection (6), the interim order lapses on—

(a) the determination of the application,

- (b) the expiry of the ordinary time for bringing an appeal against the determination, or
- (c) if such appeal is brought, the determination or abandonment of the appeal or any further appeal or the expiry of the time for bringing any further appeal,

whichever is the latest.

(8) Notice of an application under subsection (4) shall be given by the respondent or other person making the application to—

- (a) the Minister, and
- (b) any person to whom the Court directs that notice of the application be given.

(9) Notice of an application under subsection (5) shall be given by the Minister to—

- (a) the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts, and
- (b) any person to whom the Court directs that notice of the application be given.

Disposal order respecting specified property.

22C.—(1) Subject to subsection (2), where an interim order has been in force for not less than 12 months in relation to specified property, the High Court may, on application by the Minister, make an order authorising the Minister to dispose of the property as he sees fit.

(2) Subject to subsection (4), the Court shall make a disposal order in relation to any property that is the subject of an application under subsection (1) unless it is satisfied that the property is not the property of an unlawful organisation.

(3) The Minister shall give notice of an application under this section to—

- (a) the respondent unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts, and
- (b) such other (if any) persons as the Court may direct.

(4) Before deciding whether to make a disposal order under subsection (1), the Court shall give any person claiming ownership of the specified property an opportunity to be heard by the

Court and to show cause why the order should not be made.

(5) On application by the respondent or, if the respondent's whereabouts cannot be ascertained, on the Court's own initiative, the Court may, if it considers it appropriate to do so in the interests of justice, adjourn the hearing of an application under subsection (1) for such period not exceeding 2 years as it considers reasonable.

Ancillary orders and provision in relation to certain profits or gains, etc.

22D.—(1) At any time while an interim order is in force, the High Court may, on application by the Minister, make such orders as it considers necessary or expedient to enable the interim order to have full effect.

(2) The Minister shall give notice of an application under this section to—

(a) the respondent unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts, and

(b) such other (if any) persons as the Court may direct.

(3) An interim order or disposal order may be expressed to apply to—

(a) any profit, gain or interest,

(b) any dividend or other payment, or

(c) any other property,

payable or arising, after the making of the order, in connection with any other property to which the order relates.

Evidence.

22E.—(1) Production in court in any proceedings of a document signed by the Minister and stating that the property specified in the document would, but for the operation of section 22, have been the property of an unlawful organisation is evidence that the specified property would, but for the operation of that section, have been the property of an unlawful organisation, unless the contrary is shown.

(2) A document purporting to be a document of the Minister under subsection (1) and to be signed by the Minister shall be deemed for the purposes of this section to be such a document and to have been so signed, unless the contrary is shown.

Seizure of certain property.

22F.—(1) Where an interim order or a disposal order is in force, a member of the Garda Síochána or an officer of customs and excise may seize any property that is the subject of the order

for the purpose of preventing the property being removed from the State.

(2) Property seized under this section shall be dealt with in accordance with the directions of the High Court.

Compensation. 22G.—(1) An application to the High Court for an order under this section may be made where—

- (a) an interim order is discharged or lapses and a disposal order in relation to the matter is not made or, if made, is discharged, or
- (b) an interim order or a disposal order is varied on appeal.

(2) On application under subsection (1) by a person who satisfies the Court that the person is the owner of any property to which—

- (a) an interim order referred to in subsection (1)(a) related,
- (b) an order referred to in subsection (1)(b) had related, but, by reason of its being varied by a court, has ceased to relate,

the Court may award the person such (if any) compensation payable by the Minister as it considers just in the circumstances in respect of any loss incurred by the person by reason of the order concerned.

(3) The Minister shall be given notice of, and be entitled to be heard in, any proceedings under this section.

Application of certain provisions of Act of 1996.

22H.—For the purposes of this Part, sections 6, 7 and 9 to 13 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order or a disposal order made under this Part, or an application for such order, had been made under the Act of 1996:

- (a) a reference in any of the applicable provisions of the Act of 1996 to applicant or Minister shall be construed as referring to the Minister for Justice, Equality and Law Reform;
- (b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 22A of this Act.

Immunity from proceedings.

22I.—No action or proceeding of any kind lies against a person in any court in respect of any act done or omission made in compliance with

an order under any of sections 22B to 22D and 22H.”.

52.—Section 38 of the Act of 1939 is amended by adding the following subsection:

Amendment of section 38 of Act of 1939.

“(4) For the purposes of this Act, a Special Criminal Court is in existence if it has been established under this section and has at the relevant time not fewer than 3 members appointed under section 39.”.

53.—Section 49 of the Act of 1939 is amended by renumbering it as section 49(1) and adding the following subsections:

Amendment of section 49 of Act of 1939.

“(2) A trial that is to be heard before a Special Criminal Court may be transferred by the Court, on its own motion or on the application of a triable person or the Director of Public Prosecutions, to another Special Criminal Court, but only if the first Court decides that it would be in the interests of justice to do so.

(3) In deciding whether it is in the interests of justice to transfer a trial, the Special Criminal Court may consider any factors it thinks relevant, including—

(a) whether the transfer would be in the interests of the expeditious administration of justice, and

(b) whether the transfer would prejudice the triable person or persons or the prosecution.

(4) A trial may be transferred under this section notwithstanding that an order has been made under subsection (1)(e) in relation to the triable person or persons.

(5) Where 2 or more triable persons are to be tried jointly, the decision of the Special Criminal Court to transfer the trial applies in relation to all of them.

(6) Subsection (5) does not affect the right of a triable person to apply for a separate trial and, if the application is granted, then to apply for a transfer of that trial.

(7) The decision of a Special Criminal Court to transfer a trial is final and unappealable.

(8) In this section ‘triable person’ means a person sent or sent forward for trial to, or charged before or transferred under this Act to, a Special Criminal Court.”.

54.—(1) Section 2(1) of the Act of 1985 is amended by repealing paragraph (c).

Amendment and commencement of section 2 of Act of 1985.

(2) Section 2 of the Act of 1985 comes into operation on the passing of this Act.

Amendment of
section 8 of Act of
1985.

55.—Section 8(2) of the Act of 1985 is amended by inserting “or any other form of property” after “Moneys”.

Amendment of
Defence Act 1954.

56.—The Defence Act 1954 is amended as follows:

(a) in section 169 (as amended by section 7 of the Criminal Justice Act 1990) by substituting the following for subsection (3):

“(3) Where a person charged under this section is convicted by a court-martial of an offence other than treason or murder, he shall be liable to be punished as follows:

- (a) if he is convicted of manslaughter, be liable to imprisonment for life or any lesser punishment awardable by a court-martial;
- (b) if he is convicted of rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990), be liable to imprisonment for life or any lesser punishment awardable by a court-martial;
- (c) if he is convicted of an act of genocide which would be punishable under the Genocide Act 1973 be liable—
 - (i) in case the offence consists of the killing of any person, to imprisonment for life, or
 - (ii) in any other case, to imprisonment for a term not exceeding fourteen years;
- (d) if he is convicted of an offence under the Criminal Justice (United Nations Convention against Torture) Act 2000 be liable to imprisonment for life;
- (e) if he is convicted of an offence under the Criminal Justice (Safety of United Nations Workers) Act 2000 be liable either to suffer any punishment assigned for such offence by that Act or any lesser punishment awardable by a court-martial;
- (f) if he is convicted of an offence under the *Criminal Justice (Terrorist Offences) Act 2005*, be liable to suffer any punishment assigned for such offence by that Act;
- (g) if he is convicted of any offence not before in this section particularly specified which when committed in the State is punishable by the ordinary criminal law

of the State, be liable, whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by law of the State or to suffer—

(i) if he is subject to military law as an officer, dismissal with ignominy from the Defence Forces or any lesser punishment awardable by a court-martial, or

(ii) if he is subject to military law as a man, imprisonment for any term not exceeding two years or any lesser punishment awardable by a court-martial.”;

(b) in section 192(2)(c) by inserting “or an offence under the *Criminal Justice (Terrorist Offences) Act 2005*” after “an offence under the Criminal Justice (Safety of United Nations Workers) Act, 2000” (inserted by section 6 of the Criminal Justice (Safety of United Nations Workers) Act 2000);

(c) in section 192(3) by inserting “or an offence under the *Criminal Justice (Terrorist Offences) Act 2005*” after “an offence under the Criminal Justice (Safety of United Nations Workers) Act, 2000” (inserted by section 6 of the Criminal Justice (Safety of United Nations Workers) Act 2000).

57.—(1) Section 3(1) of the Act of 1965 is amended by substituting the following for the definition of “political offence”:

Amendment of Extradition Act 1965.

“‘political offence’ does not include any of the following:

(a) the taking or attempted taking of the life of a Head of State or a member of his family;

(b) an offence within the scope of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances done at Vienna on the 20th of December, 1988;

(c) an offence within the scope of the International Convention for the Suppression of Terrorist Bombings adopted by resolution 52/164 of the General Assembly of the United Nations on 15 December 1997;

(d) an offence within the scope of the International Convention for the Suppression of the Financing of Terrorism adopted by resolution 54/109 of the General Assembly of the United Nations on 9 December 1999;”.

(2) Section 3 of the Act of 1965 is amended by the substitution, in subsection (1), of the following definition for the definition of “country” (inserted by section 47(a) of the Act of 2003):

“‘country’ includes—

- (a) a place or territory for whose external relations a country, other than that place or territory, is (in whole or in part) responsible, and
- (b) a place or territory for whose external relations the government of a country, other than the government of that place or territory, is (in whole or in part) responsible.”.

(3) Section 8 (amended by section 49 of the Act of 2003) of the Act of 1965 is amended by the substitution of the following subsections for subsections (1) and (1A):

“(1) Where by any international agreement or convention to which the State is a party an arrangement (in this Act referred to as an extradition agreement) is made with another country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the Minister is satisfied that reciprocal facilities to that effect will be afforded by another country, the Minister for Foreign Affairs may, after consultation with the Minister, by order apply this Part—

- (a) in relation to that country, or
- (b) in relation to a place or territory for whose external relations that country is (in whole or in part) responsible.

(1A) Where at any time after the making of an order under subsection (1), a country becomes a party to an extradition agreement to which that order applies, the Minister for Foreign Affairs may, after consultation with the Minister, by order so declare, and this Part shall, upon the making of the second-mentioned order, apply—

- (a) to that country, or
- (b) if that country became a party to the extradition agreement concerned for the purpose only of its applying in relation to a place or territory for whose external relations that country is (in whole or in part) responsible, to that place or territory.”.

Amendment of
Extradition
(Amendment) Act
1994.

58.—The First Schedule to the Extradition (Amendment) Act 1994 is amended by inserting the following after paragraph 6B:

“6C. An offence under *section 6(1)(a), 9 or 11 of the Criminal Justice (Terrorist Offences) Act 2005.*”.

Amendment of
Criminal Procedure
Act 1967.

59.—The Criminal Procedure Act 1967 is amended as follows:

- (a) in section 13(1) by inserting “or the offence of murder under *section 6 or 11 of the Criminal Justice (Terrorist Offences) Act 2005* or an attempt to commit such offence” after “the offence of killing or attempted killing under paragraph (h) or (j) of section 2(1) of the Maritime Security Act 2004” (inserted by section 10 of the Maritime Security Act 2004);

(b) in section 29(1) by inserting the following after paragraph (j) (inserted by section 10 of the Maritime Security Act 2004):

“(k) the offence of murder under *section 6 or 11 of the Criminal Justice (Terrorist Offences) Act 2005* or an attempt to commit such offence.”.

60.—The Schedule to the Bail Act 1997 is amended by inserting the following after paragraph 32: Amendment of Bail Act 1997.

“Suppression of Terrorism.

33.—Any offence under the *Criminal Justice (Terrorist Offences) Act 2005*.”.

PART 7

COMMUNICATIONS DATA

61.—(1) In this Part—

Interpretation of
this Part.

“Act of 1993” means the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;

“aggregated data” means data that cannot be related to individual subscribers or users;

“data” means communications data;

“data retention request” means a request made under *section 63* for the retention of traffic data or location data or both;

“designated judge” means the person designated under section 8 of the Act of 1993;

“Directive” means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and protection of privacy in the electronic communications sector;

“disclosure request” means a request under *section 64* for the disclosure of traffic data or location data retained in accordance with *section 63(5)*;

“Garda Commissioner” means the Commissioner of the Garda Síochána;

“processing” has the same meaning as in the Data Protection Acts 1988 and 2003;

“Referee” means the holder of the office of Complaints Referee under the Act of 1993;

“service provider” means a person who is engaged in the provision of a publicly available electronic communications service by means of fixed line or mobile telephones.

(2) A word or expression that is used but not defined in this Part and is defined in the Directive has the same meaning in this Part as in the Directive.

Application of this Part.

62.—This Part applies to data relating to communications transmitted by means of a fixed line or mobile telephone, but it does not apply to the content of such communications.

Retention of traffic and location data relating to communications by phone.

63.—(1) Subject to *subsections (2) and (4)*, the Garda Commissioner may request a service provider to retain, for a period of 3 years, traffic data or location data or both for the purposes of—

- (a) the prevention, detection, investigation or prosecution of crime (including but not limited to terrorist offences), or
- (b) the safeguarding of the security of the State.

(2) The data retention request must be made in writing.

(3) Traffic data and location data that are in the possession of a service provider on the passing of this Act and that were retained by the service provider for the purposes specified in *subsection (1)* are deemed to have been the subject of a data retention request, but only if the 3 year retention period for the data has not elapsed before the passing of this Act.

(4) For the purposes of this Part, the 3 year retention period begins—

- (a) in the case of traffic data or location data referred to in *subsection (3)*, on the date before the passing of this Act on which the data were first processed by the service provider, or
- (b) in the case of any other traffic data or location data, on the date on or after the passing of this Act on which the data were first so processed.

(5) Notwithstanding any other enactment or instrument, a service provider shall retain, for the purposes and the period specified in *subsection (1)*, the data specified in a data retention request made to the provider.

(6) Nothing in this section shall be taken as requiring a service provider to retain aggregated data or data that have been made anonymous.

Access to data retained for law enforcement and security purposes.

64.—(1) Subject to *subsection (7)*, a service provider shall not access data retained in accordance with *section 63(5)*, except—

- (a) at the request and with the consent of the person to whom the data relate,
- (b) for the purpose of complying with a disclosure request under *subsection (2) or (3)* of this section,
- (c) in accordance with a court order,
- (d) for the purpose of civil proceedings in any court, or
- (e) as may be authorised by the Data Protection Commissioner.

(2) If a member of the Garda Síochána not below the rank of chief superintendent is satisfied that access to any data retained by a service provider in accordance with *section 63(5)* is required for

the purposes for which the data were retained, that member may request the service provider to disclose the data to the member.

(3) If an officer of the Permanent Defence Force not below the rank of colonel is satisfied that access to any data retained by a service provider in accordance with *section 63(5)* is required for the purpose of safeguarding the security of the State, that officer may request the service provider to disclose the data to the officer.

(4) A disclosure request must be made in writing, but in cases of exceptional urgency the request may be made orally (whether by telephone or otherwise) by a person entitled under *subsection (2)* or *(3)* to make the request.

(5) A person who makes a disclosure request orally must confirm the request in writing to the service provider within 24 hours.

(6) A service provider shall comply with a disclosure request made to the service provider.

(7) Where all or part of the period specified in a data retention request coincides with the period during which any of the data specified in the request may, in accordance with law, be processed for purposes other than those specified in the request, this section does not prevent that data from being processed for those other purposes.

65.—(1) A person who believes that data that relate to the person and that are in the possession of a service provider have been accessed following a disclosure request may apply to the Referee for an investigation into the matter.

Complaints
procedure.

(2) If an application is made under this section (other than one appearing to the Referee to be frivolous or vexatious), the Referee shall investigate—

- (a) whether a disclosure request was made as alleged in the application, and
- (b) if so, whether any provision of *section 64* has been contravened in relation to the disclosure request.

(3) If, after investigating the matter, the Referee concludes that a provision of *section 64* has been contravened in relation to the disclosure request, the Referee shall—

- (a) notify the applicant in writing of that conclusion, and
- (b) make a report of the Referee's findings to the Taoiseach.

(4) In addition, in the circumstances specified in *subsection (3)*, the Referee may, if he or she thinks fit, by order do either or both of the following:

- (a) direct the destruction of the relevant data and any copies of the data;
- (b) make a recommendation for the payment to the applicant of such sum by way of compensation as may be specified in the order.

(5) If, after investigating the matter, the Referee concludes that no provision of *section 64* has been contravened, the Referee shall notify the applicant in writing to that effect.

(6) A decision of the Referee under this section is final.

(7) For the purpose of an investigation under this section, the Referee is entitled to access to and has the power to inspect any official documents or records relating to the relevant application.

(8) Any person who was concerned in, or has information relevant to, the making of a disclosure request in respect of which an application is made under this section shall give the Referee, on his or her request, such information relating to the request as is in the person's possession.

Amendment of section 8 of Act of 1993.

66.—Section 8 of the Act of 1993 is amended by substituting the following subsections for subsection (1):

“(1) The President of the High Court shall from time to time after consulting with the Minister invite a person who is a judge of the High Court to undertake (while serving as such a judge) the duties specified in this section and *section 67* of the *Criminal Justice (Terrorist Offences) Act 2005* and, if the invitation is accepted, the Government shall designate the judge for the purposes of this Act and the *Criminal Justice (Terrorist Offences) Act 2005*.

(1A) Subsection (1) does not affect the functions of the Data Protection Commissioner under section 10 of the Data Protection Act 1988.”.

Duties of designated judge in relation to this Part.

67.—(1) In addition to the duties assigned under section 8 of the Act of 1993, the designated judge shall—

- (a) keep the operation of the provisions of this Part under review,
- (b) ascertain whether the Garda Síochána and the Permanent Defence Force are complying with its provisions, and
- (c) include, in the report to the Taoiseach under section 8(2) of the Act of 1993, such matters relating to this Part that the designated judge considers appropriate.

(2) For the purpose of carrying out the duties assigned under this section, the designated judge—

- (a) has the power to investigate any case in which a disclosure request is made, and
- (b) is entitled to access to and has the power to inspect any official documents or records relating to the request.

(3) Any person who was concerned in, or has information relevant to, the preparation or making of a disclosure request shall give the designated judge, on his or her request, such information relating to the request as is in the person's possession.

(4) The designated judge may, if he or she considers it desirable to do so, communicate with the Taoiseach or the Minister concerning

disclosure requests and with the Data Protection Commissioner in connection with the Commissioner's functions under the Data Protection Acts 1988 and 2003.

PART 8

EUROPEAN ARREST WARRANT

68.—The amendments effected by this Part (other than *section 83*) shall apply to European arrest warrants, and facsimile and true copies thereof, that are endorsed under section 13, or produced under section 14(7), of the Act of 2003 after the passing of this Act.

Application of this Part.

69.—The Act of 2003 is amended by the insertion of the following section:

Issuing state presumed to comply with Framework Decision.

“4A.—It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown.”.

70.—The Act of 2003 is amended by the substitution of the following section for section 5:

Corresponding offences.

“5.—For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State.”.

71.—The Act of 2003 is amended by the substitution of the following section for section 10:

Obligation to surrender.

“10.—Where a judicial authority in an issuing state duly issues a European arrest warrant in respect of a person—

- (a) against whom that state intends to bring proceedings for an offence to which the European arrest warrant relates,
- (b) who is the subject of proceedings in that state for an offence to which the European arrest warrant relates,
- (c) who has been convicted of, but not yet sentenced in respect of, an offence to which the European arrest warrant relates, or
- (d) on whom a sentence of imprisonment or detention has been imposed in respect of an offence to which the European arrest warrant relates, and who fled from the issuing state before he or she—
 - (i) commenced serving that sentence, or
 - (ii) completed serving that sentence,

that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state.”.

European arrest
warrant.

72.—Section 11 of the Act of 2003 is amended by—

(a) the substitution of the following subsections for subsection (1):

“(1) A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision.

(1A) Subject to subsection (2A), a European arrest warrant shall specify—

- (a) the name and the nationality of the person in respect of whom it is issued,
- (b) the name of the judicial authority that issued the European arrest warrant, and the address of its principal office,
- (c) the telephone number, fax number and e-mail address (if any) of that judicial authority,
- (d) the offence to which the European arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned,
- (e) that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his or her arrest, or other order of a judicial authority in the issuing state having the same effect, has been issued in respect of the offence,
- (f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, and
- (g) (i) the penalties to which that person would, if convicted of the offence specified in the European arrest warrant, be liable,
- (ii) where that person has been convicted of the offence specified in the European arrest warrant but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence, or

(iii) where that person has been convicted of the offence specified in the European arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists.”,

(b) the insertion of the following subsection:

“(2A) If it is not practicable for any of the information to which subsection (1A) (inserted by section 72(a) of the *Criminal Justice (Terrorist Offences) Act 2005*) applies to be specified in the European arrest warrant, it may be specified in a separate document.”,

and

(c) the deletion of subsection (3).

73.—Section 12 of the Act of 2003 is amended by—

Amendment of section 12 of Act of 2003.

(a) the substitution, in subsection (2), of “issuing judicial authority or the issuing state, as may be appropriate,” for “issuing judicial authority”,

(b) the insertion of the following subsection:

“(3A) An undertaking required under this Act may be set out in the European arrest warrant or in a separate document.”,

(c) the substitution of the following subsection for subsection (4):

“(4) Notwithstanding subsection (3), the issuing judicial authority shall be deemed to have complied with subsection (1)—

(a) if facsimile copies of—

(i) the European arrest warrant, and

(ii) where appropriate, a translation thereof,

are transmitted by or on behalf of the issuing judicial authority to the Central Authority in the State, and

(b) where the Minister makes regulations under subsection (10), there is, in relation to those facsimile copies, compliance with the regulations.”,

(d) the substitution of the following subsection for subsection (5):

“(5) Notwithstanding subsection (3), the issuing judicial authority or the issuing state, as may be appropriate, shall be deemed to have complied with subsection (2)—

(a) if facsimile copies of—

(i) such undertakings as are required under this Act, and

(ii) where appropriate, translations thereof,

are transmitted by it or on its behalf to the Central Authority in the State, and

(b) where the Minister makes regulations under subsection (10) there is, in relation to those facsimile copies, compliance with the regulations.”,

(e) the substitution, in subsection (6), of “issuing judicial authority or the issuing state, as may be appropriate,” for “issuing judicial authority” in each place that it occurs,

(f) the substitution, in paragraph (b) of subsection (8), of “an issuing judicial authority or the issuing state, as may be appropriate,” for “a judicial authority in the issuing state”,

(g) the insertion, in subsection (8), of the following new paragraph:

“(c) a document referred to in section 11(2A) (inserted by *section 72(b)* of the *Criminal Justice (Terrorist Offences) Act 2005*),”

and

(h) the substitution of the following subsection for subsection (11):

“(11) In this section ‘European arrest warrant’ includes a document referred to in section 11(2A) (inserted by *section 72(b)* of the *Criminal Justice (Terrorist Offences) Act 2005*).”.

Amendment of
section 14 of Act of
2003.

74.—Section 14 of the Act of 2003 is amended by—

(a) the substitution of the following subsection for subsection (6):

“(6) Notwithstanding subsection (5), the High Court may order the release from custody of a person remanded in custody under this section if, at any time after the person has been so remanded, it appears to the High Court that a European arrest warrant has not been issued in respect of the person.”,

and

(b) the substitution of the following subsection for subsection (7):

“(7) Where, in relation to a person who has been remanded in custody under subsection (3), a European arrest warrant is transmitted to the Central Authority in the State in accordance with section 12—

- (a) that person shall be brought before the High Court as soon as may be, and
- (b) the European arrest warrant, or a facsimile or true copy thereof, shall be produced to the High Court,

and the High Court shall, if satisfied that the person is the person in respect of whom the European arrest warrant was issued—

- (i) remand the person in custody or on bail (and for that purpose the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence), and
 - (ii) fix a date for the purposes of section 16 (being a date that falls not later than 21 days after the date of the person’s arrest).”,
- (c) the substitution, in subsection (10), of the following definition for the definition of “Schengen alert”:

“ ‘Schengen alert’ means a document that—

- (a) indicates that a European arrest warrant has been issued by a judicial authority in a Member State in respect of the person named in the document on such date as is specified in the document,
- (b) has been transmitted by electronic means by or on behalf of the judicial authority concerned or the issuing state concerned, as may be appropriate, to the Garda Síochána, using equipment designed, or intended for use, for the purposes of the Schengen Information System, and
- (c) is capable of being viewed by the Garda Síochána by means of equipment designed, or intended for use, for those purposes;”.

75.—Section 15 of the Act of 2003 is amended by—

Amendment of
section 15 of Act of
2003.

- (a) the substitution of the following subsections for subsections (1) and (2):

“(1) Where a person is brought before the High Court under section 13, he or she may consent to his or her being surrendered to the issuing state and, if he or she so consents, the High Court shall—

- (a) if the European arrest warrant, or a facsimile or true copy thereof, has been endorsed in accordance with section 13 for execution of the warrant,
- (b) if it is satisfied that—
 - (i) the person voluntarily consents to his or her being surrendered to the issuing state concerned and is aware of the consequences of his or her so consenting, and
 - (ii) the person has obtained, or has been afforded the opportunity of obtaining or being provided with professional legal advice before consenting to his or her surrender,
- (c) if it is not required, under section 21A, 22, 23 or 24 (inserted by sections 79, 80, 81 and 82 of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and
- (d) if the surrender of the person is not prohibited by Part 3 or the Framework Decision (including the recitals thereto),

make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her.

(2) Where a person is brought before the High Court under section 14, he or she may consent to his or her being surrendered to the issuing state and, if he or she so consents, the High Court shall—

- (a) upon production to the High Court of the European arrest warrant or facsimile or true copies thereof,
- (b) if it is satisfied that—
 - (i) the person voluntarily consents to his or her being surrendered to the issuing state concerned and is aware of the consequences of his or her so consenting, and
 - (ii) the person has obtained, or has been afforded the opportunity of obtaining or being provided with, professional legal advice and representation before consenting to his or her surrender,
- (c) if it is not required, under section 21A, 22, 23 or 24 (inserted by sections 79, 80, 81 and 82 of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and

(d) if the surrender of the person is not prohibited by Part 3 or the Framework Decision (including the recitals thereto),

make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her.”,

(b) the substitution of the following subsection for subsection (3):

“(3) An order under this section shall take effect upon the expiration of 10 days beginning on the date of the making of the order or such earlier date as the High Court, upon the request of the person to whom the order applies, directs.”,

(c) the substitution, in subsection (5), of the following paragraph for paragraph (a):

“(a) the order takes effect in accordance with subsection (3) (inserted by *section 75(b)* of the *Criminal Justice (Terrorist Offences) Act 2005*), or”,

and

(d) the substitution of the following subsection for subsection (7):

“(7) A person (to whom an order for the time being in force under this section applies) who is not surrendered to the issuing state in accordance with subsection (5) shall be released from custody immediately upon the expiration of the 10 days referred to in that subsection unless, upon such expiration, proceedings referred to in subsection (6) are pending.”.

76.—Section 16 of the Act of 2003 is amended by—

Date of hearing in relation to European arrest warrant.

(a) the substitution of the following subsection for subsection (1):

“(1) Where a person does not consent to his or her surrender to the issuing state or has withdrawn his or her consent under section 15(9) the High Court may, upon such date as is fixed under section 13 or such later date as it considers appropriate, make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her, provided that—

(a) the High Court is satisfied that the person before it is the person in respect of whom the European arrest warrant was issued,

(b) the European arrest warrant, or a facsimile or true copy thereof, has been endorsed in accordance with section 13 for execution of the warrant,

- (c) where appropriate, an undertaking under section 45 or a facsimile or true copy thereof is provided to the court,
 - (d) the High Court is not required, under section 21A, 22, 23 or 24 (inserted by sections 79, 80, 81 and 82 of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and
 - (e) the surrender of the person is not prohibited by Part 3 or the Framework Decision (including the recitals thereto).”,
- (b) the substitution of the following subsection (2):

“(2) Where a person does not consent to his or her surrender to the issuing state or has withdrawn his or her consent under section 15(9), the High Court may, upon such date as is fixed under section 14 or such later date as it considers appropriate, make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her, provided that—

- (a) the European arrest warrant and, where appropriate, an undertaking under section 45, or facsimile or true copies thereof are provided to the court,
 - (b) the High Court is satisfied that the person before it is the person in respect of whom the European arrest warrant was issued,
 - (c) the High Court is not required, under section 21A, 22, 23 or 24 (inserted by sections 79, 80, 81 and 82 of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and
 - (d) the surrender of the person is not prohibited by Part 3 or the Framework Decision (including the recitals thereto).”,
- (c) the insertion of the following subsection:

“(2A) Where the High Court does not—

- (a) make an order under subsection (1) on the date fixed under section 13, or
- (b) make an order under subsection (2) on the date fixed under section 14,

it may remand the person before it in custody or on bail and, for those purposes, the High Court shall have the same powers in relation to remand as it

would have if the person were brought before it charged with an indictable offence.”,

- (d) the substitution of the following subsection for subsection (3):

“(3) An order under this section shall take effect upon the expiration of 15 days beginning on the date of the making of the order or such earlier date as the High Court, upon the request of the person to whom the order applies, directs.”,

- (e) the substitution, in subsection (5), of the following paragraph for paragraph (a):

“(a) the order takes effect in accordance with subsection (3) (inserted by *section 76(d)* of the *Criminal Justice (Terrorist Offences) Act 2005*), or”,

- (f) the substitution of the following subsection for subsection (7):

“(7) A person (to whom an order for the time being in force under this section applies) who is not surrendered to the issuing state in accordance with subsection (5) shall be released from custody immediately upon the expiration of the 10 days referred to in that subsection unless, upon such expiration, proceedings referred to in subsection (6) are pending.”,

and

- (g) the substitution—

- (i) in subsection (9), of “Subsections (7) and (8) shall not apply if” for “Subsection (8) shall not apply if”,
- (ii) in paragraph (a)(ii) of that subsection, of “subsection (7) or (8)” for “subsection (8)”, and
- (iii) in paragraph (b)(ii) of that subsection, of “subsection (7) or (8)” for “subsection (8)”,

and the said subsection (9) as so amended is set out in the Table to this paragraph.

TABLE

- (9) Subsections (7) and (8) shall not apply if—

- (a) (i) the person has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State,
- (ii) on the date on which he or she would, but for this subsection, be entitled to be released under subsection (7) or (8), all or part of the term of imprisonment remains unexpired, and
- (iii) the person is required to serve all or part of the remainder of that term of imprisonment, or

(b) (i) the person has been charged with or convicted of an offence in the State, and

(ii) on the date on which he or she would, but for this paragraph, be entitled to be released from custody under subsection (7) or (8), he or she is required to be in custody by virtue of having been remanded in custody pending his or her being tried, or the imposition of sentence, in respect of that offence.

Amendment of section 18 of Act of 2003.

77.—Section 18 of the Act of 2003 is amended by the insertion of the following subsection:

“(2A) Where the High Court decides to postpone a person’s surrender under this section, it may remand the person in custody or on bail and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.”.

Amendment of section 20 of Act of 2003.

78.—Section 20 of the Act of 2003 is amended—

(a) in subsection (1), by the substitution of “issuing judicial authority or the issuing state, as may be appropriate,” for “issuing judicial authority”, and

(b) in subsection (2), by the substitution of “issuing judicial authority or the issuing state, as may be appropriate,” for “issuing judicial authority”.

Refusal of surrender where no decision to prosecute.

79.—The Act of 2003 is amended by the insertion of the following section:

“21A.—(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him or her for, that offence in the issuing state.

(2) Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved.”.

Rule of specialty.

80.—The Act of 2003 is amended by the substitution of the following section for section 22:

“22.—(1) In this section, except where the context otherwise requires, ‘offence’ means, in relation to a person to whom a European arrest warrant applies, an offence (other than an offence specified in the European arrest warrant in respect of which the person’s surrender is ordered under this Act) under the law of the issuing state committed before the person’s surrender, but shall not include an offence consisting, in whole, of acts or omissions of which the offence specified in the European arrest warrant consists in whole or in part.

(2) Subject to this section, the High Court shall refuse to surrender a person under this Act if it is satisfied that—

- (a) the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be proceeded against, sentenced or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence, and
- (b) the person will be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence.

(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to—

- (a) proceed against him or her,
- (b) sentence or detain him or her for a purpose referred to in subsection (2)(a), or
- (c) otherwise restrict him or her in his or her personal liberty,

in respect of an offence, unless the contrary is proved.

(4) The surrender of a person under this Act shall not be refused under subsection (2) if—

- (a) upon conviction in respect of the offence concerned he or she is not liable to a term of imprisonment or detention, or
- (b) the High Court is satisfied that, where upon such conviction he or she is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his or her personal liberty, the said other penalty only will be imposed if he or she is convicted of the offence.

(5) The surrender of a person under this Act shall not be refused under subsection (2) if it is intended to impose in the issuing state a penalty (other than a penalty consisting of a restriction of the person's liberty) including a financial penalty in respect of an offence of which the person claimed has been convicted, notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure or comply with any requirements of which the penalty consists) he or she may, under the law of the issuing state be detained or otherwise deprived of his or her personal liberty.

(6) The surrender of a person under this Act shall not be refused under subsection (2) if the High Court—

- (a) is satisfied that—
 - (i) proceedings will not be brought against the person in respect of an offence,

- (ii) a penalty will not be imposed on the person in respect of an offence, and
- (iii) the person will not be detained or otherwise restricted in his or her personal liberty for the purposes of an offence,

without the issuing judicial authority first obtaining the consent thereto of the High Court,

(b) is satisfied that—

- (i) the person consents to being surrendered under section 15,
- (ii) at the time of so consenting he or she consented to being so proceeded against, to such a penalty being imposed, or being so detained or restricted in his or her personal liberty, and was aware of the consequences of his or her so consenting, and
- (iii) the person obtained or was afforded the opportunity of obtaining, or being provided with, professional legal advice in relation to the matters to which this section relates,

(c) is satisfied that—

- (i) such proceedings will not be brought, such penalty will not be imposed and the person will not be so detained or otherwise restricted in his or her personal liberty before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he or she is surrendered, and
- (ii) during that period he or she will be free to leave the issuing state,

except where having been so discharged he or she leaves the issuing state and later returns thereto (whether during that period or later), or

(d) is satisfied that such proceedings will not be brought, such penalty will not be imposed and the person will not be so detained or restricted in his or her personal liberty unless—

- (i) the person voluntarily gives his or her consent to being so proceeded against, such a penalty being imposed, or being so detained or restricted in his or her personal liberty, and is fully aware of the consequences of so doing,
- (ii) that consent is given before the competent judicial authority in the issuing state, and
- (iii) the person obtains or is afforded the opportunity of obtaining, or being provided with, professional legal advice in the issuing state in relation to the matters to which this section relates before he or she gives that consent.

(7) The High Court may, in relation to a person who has been surrendered to an issuing state under this Act, consent to—

- (a) proceedings being brought against the person in the issuing state for an offence,
- (b) the imposition in the issuing state of a penalty, including a penalty consisting of a restriction of the person's liberty, in respect of an offence, or
- (c) proceedings being brought against, or the detention of, the person in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence,

upon receiving a request in writing from the issuing state in that behalf.

(8) The High Court shall not give its consent under subsection (7) if the offence concerned is an offence for which a person could not by virtue of Part 3 or the Framework Decision (including the recitals thereto) be surrendered under this Act.”.

81.—The Act of 2003 is amended by the substitution of the following section for section 23:

Surrender of person
by issuing state to
other Member
State.

“23.—(1) In this section, except where the context otherwise requires—

‘offence’ means, in relation to a person to whom a European arrest warrant applies, an offence under the law of a Member State (other than the issuing state) committed before the person's surrender to the issuing state under this Act; and

‘Member State’ means a Member State other than the issuing state.

(2) Subject to this section, the High Court shall refuse to surrender a person under this Act if it is satisfied that—

- (a) the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be surrendered to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of an offence, and
- (b) the person will be surrendered to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of an offence.

(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to surrender him or her to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of an offence, unless the contrary is proved.

(4) The surrender of a person under this Act shall not be refused under subsection (2) if the High Court—

- (a) is satisfied that the issuing judicial authority will not surrender the person to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State, without first obtaining the consent thereto of the High Court,
- (b) is satisfied that—
- (i) the person consents to being surrendered under section 15,
 - (ii) at the time of so consenting he or she consented to being surrendered by the issuing state to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State, and was aware of the consequences of his or her so consenting, and
 - (iii) the person obtained or was afforded the opportunity of obtaining, or being provided with, professional legal advice in relation to the matters to which this section relates,
- (c) is satisfied that—
- (i) the person will not be surrendered by the issuing state to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State, before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he or she is surrendered under this Act, and
 - (ii) during that period he or she will be free to leave the issuing state,
- except where having been so discharged he or she leaves the issuing state and later returns thereto (whether during that period or later), or
- (d) is satisfied that the person will not be surrendered to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State unless—
- (i) the person voluntarily gives his or her consent to being so surrendered and is fully aware of the consequences of his or her so doing,
 - (ii) that consent is given before the competent judicial authority in the issuing state, and
 - (iii) the person obtains or is afforded the opportunity of obtaining, or being provided with, professional legal advice in the issuing state in relation to the matters to which this section relates before he or she gives that consent.

(5) The High Court may, in relation to a person who has been surrendered to an issuing state under this Act, consent to the person being surrendered by the issuing state to a Member State

pursuant to a European arrest warrant issued by a judicial authority in that Member State, upon receiving a request in writing from the issuing state in that behalf.

(6) The High Court shall not give its consent under subsection (5) if the offence concerned is an offence for which a person could not by virtue of Part 3 or the Framework Decision (including the recitals thereto) be surrendered under this Act.”.

82.—The Act of 2003 is amended by the substitution of the following section for section 24:

Extradition of
person by issuing
state to third state.

“24.—(1) The High Court shall refuse to surrender a person under this Act if it is satisfied that—

- (a) the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be extradited to a third country without the consent of the High Court and the Minister first being obtained, and
- (b) the person will be extradited to a third country without such consent first being obtained.

(2) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to extradite him or her to a third country, unless the contrary is proved.

(3) The issuing state may request, in writing, the High Court to consent to the extradition to a third country by the issuing state of a person surrendered to the issuing state under this Act.

(4) The High Court shall give its consent to a request under subsection (3) if it is satisfied that—

- (a) were the person concerned in the State, and
- (b) were a request for his or her extradition received in the State from the third country concerned,

his or her extradition pursuant to such a request would not be prohibited under the Extradition Acts 1965 to 2001.”.

83.—The Act of 2003 is amended by the substitution of the following section for section 42:

Proceedings in the
State.

“42.—A person shall not be surrendered under this Act if—

- (a) the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring proceedings against the person for an offence, or
- (b) proceedings have been brought in the State against the person for an offence consisting of an act or omission of which the offence specified in the European arrest warrant issued in respect of him or her consists in whole or in part.”.

SCHEDULE 1

PART 1

TREOIRCHINNEADH ÓN gCOMHAIRLE 2002/475 CGB

an 13 Meitheamh 2002

maidir leis an sceimhlitheoireacht a chomhrac

TÁ COMHAIRLE AN AONTAIS EORPAIGH,

Ag féachaint don Chonradh ag bunú an Aontais Eorpaigh, agus go háirithe Airteagal 29, Airteagal 31(e) agus Airteagal 34(2)(b) de,

Ag féachaint don togra ón gCoimisiún¹,Ag féachaint don Tuairim ó Pharlaimint na hEorpa²,

De bhrí:

(1) Go bhfuil an tAontas Eorpach fothaithe ar na luachanna uile-choiteanna arb iad dínit an duine, an tsaoirse, an comhionannas agus an dlúthpháirtíocht, an urraim do chearta an duine agus do shaoirsí bunúsacha. Tá sé bunaithe ar phrionsabal an daonlathais agus ar phrionsabal an smacht reachta, prionsabail is coiteann do na Ballstáit.

(2) Tá an sceimhlitheoireacht ar cheann de na sárúithe is tromchúisí ar na prionsabail sin. Daingníonn Dearbhú La Gomera arna ghlacadh ag an gcrúinniú neamhfhoirmiúil den Chomhairle ar an 14 Deireadh Fómhair 1995 go bhfuil an sceimhlitheoireacht ina bagairt ar an daonlathas, ar shaorfheidhmiú chearta an duine agus ar an bhforbraíocht eacnamaíoch agus sóisialta.

(3) Is páirtithe na Ballstáit uile nó cuid díobh i roinnt coinbhinsiún a bhaineann leis an sceimhlitheoireacht. De réir Choinbhinsiún Chomhairle na hEorpa an 27 Eanáir 1977 maidir leis an Sceimhlitheoireacht a Dhíothú ní cionta polaitiúla iad cionta sceimhlitheoireachta ná ní cionta iad atá bainteach le cionta polaitiúla ná ní tucaidí polaitiúla is siocair leo. Tá Coinbhinsiún maidir le buamála-sceimhlitheoireachta a dhíothú an 15 Nollaig 1997 agus Coinbhinsiún maidir le maoiniú na sceimhlitheoireachta a dhíothú an 9 Nollaig 1999 glactha ag na Náisiúin Aontaithe. Tá dréacht-choinbhinsiún domhanda in aghaidh na sceimhlitheoireachta á dhréachtú faoi láthair sna Náisiúin Aontaithe.

(4) Ag leibhéal an Aontais Eorpaigh, ghlac an Chomhairle ar an 3 Nollaig 1998 Plean Gníomhaíochta na Comhairle agus an Choimisiúin maidir leis an dóigh is fearr chun forálacha Chonradh Amstardam a chur chun feidhme a bhaineann le limistéar saoirse, slándála agus ceartais³. Ba chóir aird a thabhairt freisin ar Chonclúidí ón gComhairle an 20 Meán Fómhair 2001 agus ar phlean gníomhaíochta chun an sceimhlitheoireacht a chomhrac ón gComhairle Eorpach Uirghnách an 21 Meán Fómhair 2001. Rinneadh tagairt don sceimhlitheoireacht i gconclúidí ón gComhairle Eorpach in Tampere an 15 agus 16 Deireadh Fómhair 1999, agus ón gComhairle Eorpach in Santa María da Feira an 19 agus 20 Meitheamh 2000. Tá sí luaite freisin sa chumarsáid ón gCoimisiún chuig an gComhairle agus Parlaimint na hEorpa i dtaca le tabhairt suas chun dáta leathbhliantúil

¹ IO C 332, 27.11.2001, lch. 300.

² Tuairim a tugadh ar an 6 Feabhra 2002 (nach bhfuil foilsithe fós san Iris Oifigiúil).

³ IO C 19, 23.1.1999, lch. 1.

an scórchláir chun an dul chun cinn a athbhreithniú maidir le limistéar “saoirse, slándála agus ceartais” a chruthú san Aontas Eorpach (dara leath de 2000). Fairis sin, ar an 5 Meán Fómhair 2001 ghlac Parlaimint na hEorpa moladh maidir le ról an Aontais Eorpaigh sa chomhrac in aghaidh na sceimhlitheoireachta. Ina theannta sin, ba chóir a mheabhrú gur chomhairligh na príomhthíortha tionsclaithe (G7) agus an Rúis ar an 30 Iúil 1996 ag teacht le chéile dóibh i bPáras cúig bheart fichead chun an sceimhlitheoireacht a chomhrac.

(5) Tá an iliomad beart sonrath glactha ag an Aontas Eorpach chun an sceimhlitheoireacht agus an choiriúlacht eagraithe a chomhrac, amhail Cinneadh ón gComhairle an 3 Nollaig 1998 ag cur de chúram ar Europol déileáil le coireanna arna ndéanamh nó ar dóigh go ndéanfaí le linn gníomhaíochtaí sceimhlitheoireachta in aghaidh bheatha an duine, a iomláine coirp, saoirse phearsanta nó maoin⁴; Gníomh Comhpháirteach 96/610/CGB ón gComhairle an 15 Deireadh Fómhair 1996 maidir le clár d’inniúlachtaí, scileanna agus sainoilteacht frithsceimhlitheoireachta a chruthú agus a choimeád ar bun chun an comhar frithsceimhlitheoireachta idir na Ballstáit den Aontas Eorpach a éascú⁵; Gníomh Comhpháirteach 98/428/CGB ón gComhairle an 29 Meitheamh 1998 maidir le Gréasán Breithiúnach Eorpach a chruthú⁶, le freagrachtaí i leith cionta sceimhlitheoireachta, agus go háirithe Airteagal 2 de; Gníomh Comhpháirteach 98/733/CGB ón gComhairle an 21 Nollaig 1998 maidir le cion coiriúil a dhéanamh de rannpháirteachas in eagraíocht choiriúil sna Ballstáit den Aontas Eorpach⁷; agus Moladh ón gComhairle an 9 Nollaig 1999 maidir le comhar sa chomhrac in aghaidh grúpaí sceimhlitheoireachta a mhaoiniú.⁸

(6) Ba chóir comhfhogasú a dhéanamh i ngach Ballstát ar an sainmhíniú de chionta sceimhlitheoireachta, lena n-áirítear na cionta sin a bhaineann le grúpaí sceimhlitheoireachta. Fairis sin, ba chóir pionóis agus smachtbhannaí a léiríonn tromchúis na gcionta sin a leagan síos i leith daoine nádúrtha agus dlítheanacha a bhfuil cionta den sórt sin déanta acu nó atá freagrach as cionta den sórt sin.

(7) Ba chóir rialacha dlínse a bhunú chun a áirithiú gur féidir an cion sceimhlitheoireachta a ionchúiseamh go héifeachtach.

(8) Tá íospartaigh na gcionta sceimhlitheoireachta soghonta agus is gá mar sin bearta sonracha maidir leo.

(9) Toisc nach féidir leis na Ballstáit ag gníomhú go haontaobhach dóibh cuspóirí an ghnímh atá beartaithe a ghnóthú go leordhóthanach agus gur féidir mar sin, toisc an gá atá le cómhalartú, na cuspóirí a ghnóthú níos fearr ag leibhéal an Aontais, féadfaidh an tAontas bearta a ghlacadh i gcomhréir le prionsabal na coimhdeachta. I gcomhréir le prionsabal na comhréireachta, ní théann an Treoirchinneadh seo thar mar is gá d’fhonn na cuspóirí sin a ghnóthú.

(10) Urramaíonn an Treoirchinneadh seo na cearta bunúsacha mar atá arna ráthú sa Choinbhinsiún Eorpach chun Cearta an Duine agus Saoirsí Bunúsacha a Chosaint agus faoi mar a fhabhraíonn siad sna traidisiúin bhunreachtúla is coiteann do na Ballstáit mar phrionsabail de dhlí an Chomhphobail. Urramaíonn an tAontas na prionsabail atá aitheanta in Airteagal 6(2) den Chonradh ar an Aontas Eorpach agus atá le fáil freisin sa Chairt um Chearta Bunúsacha den Aontas Eorpach, go háirithe Caibidil VI de. Ní féidir aon ní sa Treoirchinneadh seo a fhorléiriú amhail is gurb é is aidhm dó cearta

⁴ IO C 26, 30.1.1999, lch. 22.

⁵ IO L 273, 25.10.1996, lch. 1.

⁶ IO L 191, 7.7.1998, lch. 4.

⁷ IO L 351, 29.12.1998, lch. 1.

⁸ IO C 373, 23.12.1999, lch. 1.

nó saoirsí bunúsacha a laghdú nó a shrianadh amhail an ceart chun dul ar stailc, an tsaoirse comhthionóil, comhlachais nó friotail, lena n-áirítear an ceart ag gach duine ceardechumainn a chur ar bun le daoine eile agus bheith ina bhall díobh chun a leasanna a chosaint, agus an ceart chun léirsiú atá gaolmhar leis.

(11) Gníomhartha arna ndéanamh ag fórsaí armtha le linn tréimhsí de choinbhleacht armtha, atá faoi rialú ag an dlí daonnachtúil idirnáisiúnta de réir bhrí na dtéarmaí sin faoin dlí sin, agus gníomhartha arna ndéanamh ag fórsaí armtha an Stáit agus a ndualgais oifigiúla á bhfeidhmiú acu, a mhéad atá siad faoi rialú ag rialacha eile den dlí idirnáisiúnta, níl siad faoi rialú ag an Treoirchinneadh seo,

TAR ÉIS AN TREOIRCHINNEADH SEO A GHLACADH:

Airteagal 1

Cionta sceimhlitheoireachta agus cearta agus prionsabail bunúsacha

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéantar na gníomhartha intinneacha dá dtagraítear thíos i bpointí (a) go (i), mar atá siad sainithe mar chionta faoin dlí náisiúnta, a fhéadfaidh mar gheall ar a gcineál nó a gcomhthéacs, tír nó eagraíocht idirnáisiúnta a dhochrú go tromchúiseach má dhéantar iad d'fhonn:

- pobal a imeaglú go tromchúiseach, nó
- iallach a chur go míchuí ar rialtas nó eagraíocht idirnáisiúnta gníomh a dhéanamh nó staonadh ó ghníomh a dhéanamh, nó
- na struchtúir bhunúsacha sóisialta, eacnamaíocha, bunreachtúla nó polaitiúla i dtír nó in eagraíocht idirnáisiúnta a dhíchobhsú go tromchúiseach nó a mhilleadh,

a mheas mar chionta sceimhlitheoireachta:

- (a) ionsaithe ar bheatha an duine a fhéadfaidh a bheith ina dtrúig bháis;
- (b) ionsaithe ar iomláine coirp an duine;
- (c) fuadach nó giall a ghabháil;
- (d) cur faoi deara saoráid rialtais nó poiblí, córas iompair, saoráid bonneagair, lena n-áirítear saoráid faisnéise, ardán fosaitheach arna shuíomh ar an scairbh ilchríochach, ionad poiblí nó maoin phríobháideach a léirscrios ar dóigh dó beatha an duine a chur i gcontúirt nó mórchaillteanas eacnamaíoch a dhéanamh;
- (e) aerárthaigh, longa nó córacha eile iompair daoine nó earraí a ghabháil;
- (f) airm, pléascáin nó airm núicléacha bitheolaíocha nó ceimiceacha a mhonarú, a shealbhú, a fháil, a iompar, a sholáthar nó a úsáid, agus taighde a dhéanamh ar airm bhitheolaíocha agus ceimiceacha agus iad a fhorbairt;
- (g) substaintí contúirteacha a scaoileadh nó bheith ina shiocair tinte, tuilté nó pléascán arb é is éifeacht dóibh beatha an duine a chur i gcontúirt;

- (h) cur isteach ar sholáthar uisce, cumhachta nó aon bhunacmhainne nádúrtha eile nó iad a réabadh arb é is éifeacht dóibh beatha an duine a chur i gcontúirt;
- (i) bheith ag bagairt aon cheann de na gníomhartha atá liostaithe in (a) go (h) a dhéanamh.

2. Ní bheidh d'éifeacht ag an Treoirchinneadh seo an oibleagáid a athrú cearta bunúsacha agus prionsabail dlí bunúsacha a urramú mar atá siad leagtha amach in Airteagal 6 den Chonradh ar an Aontas Eorpach.

Airteagal 2

Cionta a bhaineann le grúpa sceimhlitheoireachta

1. Chun críocha an Treoirchinnidh seo, ciallaíonn “grúpa sceimhlitheoireachta” grúpa struchtúrtha ina bhfuil beirt nó níos mó, arna bhunú thar tréimhse ama agus a ghníomhaíonn ar dhóigh chomhbheartaithe chun cionta sceimhlitheoireachta a dhéanamh. Ciallaíonn “grúpa struchtúrtha” grúpa nach gcuirtear le chéile de thaisme chun cion a dhéanamh láithreach agus nach gá go bhfuil rólanna arna sainiú go foirmiúil aige dá chuid ball, leanúnachas ballraíochta ná struchtúr forbartha.

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go bhfuil na gníomhartha intinneacha seo a leanas inphionóis:

- (a) grúpa sceimhlitheoireachta a stiúradh;
- (b) bheith rannpháirteach i ngníomhaíochtaí grúpa sceimhlitheoireachta, go fiú trí fhaisnéis nó acmhainní ábhartha a sholáthar, nó trína ghníomhaíochtaí a mhaoiniú ar aon dóigh, agus a bheith ar an eolas go rannchuideoidh an rannpháirteachas sin le gníomhaíochtaí coiriúla an ghrúpa sceimhlitheoireachta.

Airteagal 3

Cionta atá nasctha le gníomhaíochtaí sceimhlitheoireachta

Glacfaidh gach Ballstát na bearta is gá chun a áirithiú gur féidir na gníomhartha seo a leanas a áireamh ar na cionta atá nasctha leis an sceimhlitheoireacht:

- (a) tromghoid d'fhonn ceann de na gníomhartha atá liostaithe in Airteagal 1(1) a dhéanamh;
- (b) sracaireacht d'fhonn ceann de na gníomhartha atá liostaithe in Airteagal 1(1) a dhéanamh;
- (c) doiciméid riarthacha bréagacha a tharraingt suas d'fhonn ceann de na gníomhartha atá liostaithe in Airteagal 1(1)(a) go (h) agus Airteagal 2(2)(b) a dhéanamh.

Airteagal 4

Gríosú, cabhrú nó neartú, agus iarracht

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéantar inphionóis an gníomh chun gríosú nó cabhrú nó neartú le cion a dhéanamh dá dtagraítear in Airteagal 1(1), Airteagail 2 nó 3.

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéantar inphionóis an iarracht chun cion a dhéanamh dá dtagraítear in

Airteagal 1(1) agus Airteagal 3, amach ó shealbhú dá bhforáiltear in Airteagal 1(1)(f), agus an cion dá dtagraítear in Airteagal 1(1)(i).

Airteagal 5

Pionóis

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéantar inphionóis na cionta dá dtagraítear in Airteagail 1 go 4 le pionóis choiriúla atá éifeachtach, comhréireach agus athchomhairleach ar a bhfuil an t-eiseachadadh le háireamh.

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéantar inphionóis na cionta sceimhlitheoireachta dá dtagraítear in Airteagal 1(1) agus na cionta dá dtagraítear in Airteagal 4, a mhéad a bhaineann siad le cionta sceimhlitheoireachta, le pianbhreitheanna faoi choimeád is troime ná na pianbhreitheanna is infhorchurtha faoin dlí náisiúnta i leith cionta den sórt sin nuair nach bhfuil an intinn speisialta ann atá riachtanach de bhun Airteagal 1(1), ach amháin nuair atá na pianbhreitheanna is infhorchurtha ar na huasphianbhreitheanna is féidir faoin dlí náisiúnta.

3. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéantar inphionóis na cionta atá liostaithe in Airteagal 2 le pianbhreitheanna faoi choimeád, le huasphianbhreith nach lú ná cúig bliana déag i leith an chiona dá dtagraítear in Airteagal 2(2)(a), agus le huasphianbhreith nach lú ná ocht mbliana i leith na gcionta atá liostaithe in Airteagal 2(2)(b). A mhéad nach dtagraíonn an cion atá luaite in Airteagal 2 (2)(a) ach don ghníomh in Airteagal 1(1)(i), ní lú ná ocht mbliana an uasphianbhreith.

Airteagal 6

Imthosca ar leith

Glacfaidh gach Ballstát na bearta is gá chun a áirithiú gur féidir na cionta dá dtagraítear in Airteagal 5 a laghdú má dhéanann an ciontóir:

- (a) gníomhaíocht sceimhlitheoireachta a thréigean, agus
- (b) faisnéis a sholáthar do na húdaráis riarthacha nó breithiúnacha nach dtiocfadh leo a fháil ar a mhalairt de dhóigh, ag cuidiú leo:
 - (i) éifeachtaí an chiona a chosc nó a mhaolú;
 - (ii) na ciontóirí eile a shainnithint nó a thabhairt os comhair an dlí;
 - (iii) fianaise a aimsiú; nó
 - (iv) cionta eile dá dtagraítear in Airteagail 1 go 4 a chosc.

Airteagal 7

Dlíteanas daoine dlítheanacha

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú gur féidir daoine dlítheanacha a chur faoi dhlíteanas maidir le haon cheann de na cionta dá dtagraítear in Airteagail 1 go 4 arna dhéanamh ar mhaithe leo ag aon duine, ag gníomhú dó go leithleach nó mar chuid d'orgán an duine dlítheanaigh, a bhfuil ionad ceannaireachta aige laistigh den duine dlítheanach, arna bhunú ar cheann de na nithe seo a leanas:

- (a) cumhacht ionadaíochta thar ceann an duine dlítheanaigh;
- (b) údarás chun cinntí a ghlacadh thar ceann an duine dlítheanaigh,
- (c) údarás chun rialú a fheidhmiú laistigh den duine dlítheanach.

2. Ach amháin sna cásanna dá bhforáiltear i mír 1, glacfaidh gach Ballstát na bearta is gá chun a áirithiú gur féidir daoine dlítheanacha a chur faoi dhliteanas nuair is mar gheall ar ghanntanas maoirseachta nó rialú ag duine dá dtagraítear i mír 1 a dhéantar na cionta dá dtagraítear in Airteagail 1 go 4 ar mhaithe leis an duine dlítheanach sin ag duine faoina údarás.

3. Dliteanas de chuid daoine dlítheanacha faoi mhíreanna 1 agus 2, ní eisíofaídh sé imeachtaí coiriúla in aghaidh daoine nádúrtha is déantóirí, gríosóirí nó cúlpháirtithe in aon cheann de na cionta dá dtagraítear in Airteagail 1 go 4.

Airteagal 8

Pionóis in aghaidh daoine dlítheanacha

Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go bhfuil duine dlítheanach atá faoi dhliteanas de bhun Airteagal 7 inphionóis le pionóis atá éifeachtach, comhréireach agus athchomhairleach lena n-áirítear fineálacha coiriúla nó neamhchoiriúla agus ar a mbeidh pionóis eile le háireamh, amhail:

- (a) eisiamh ó bheith i dteideal sochair nó cabhair poiblí a fháil;
- (b) dícháiliúchán sealadach nó buan ó ghníomhaíochtaí tráchtála a chleachtadh;
- (c) cur faoi mhaoirseacht bhreithiúnach;
- (d) ordú um foirceannadh breithiúnach;
- (e) bunaíochtaí a dhúnadh go sealadach nó go buan a úsáideadh chun an cion a dhéanamh.

Airteagal 9

Dlínse agus ionchúiseamh

1. Glacfaidh gach Ballstát na bearta is gá chun a dhlínse a bhunú maidir leis na cionta uile dá dtagraítear in Airteagail 1 go 4 nuair:

- (a) a dhéantar an cion go hiomlán nó go páirteach ar a chríoch. Féadfaidh gach Ballstát a dhlínse a fhairsingiú má dhéantar an cion ar chríoch de chuid Ballstáit;
- (b) a dhéantar an cion ar bord loinge a bhfuil a bratach ar foluain aici nó ar aerárthach atá cláraithe ansin;
- (c) is náisiúnach nó cónaitheoir dá chuid an ciontóir;
- (d) a dhéantar an cion ar mhaithe le duine dlítheanach atá bunaithe ar a chríoch;
- (e) a dhéantar an cion in aghaidh institiúidí nó phobal an Bhallstáit i gceist nó in aghaidh institiúid den Aontas Eorpach nó comhlacht arna chur ar bun i gcomhréir leis an gConradh ag

bunú an Chomhphobail Eorpaigh nó leis an gConradh ar an Aontas Eorpach agus a bhfuil a shuíomh aige sa Bhallstát sin.

2. Nuair a thiteann cion faoi dhlínse Ballstát amháin nó níos mó agus nuair is féidir le haon cheann de na Ballstáit i dtrácht ionchúiseamh go bailí ar bhonn na bhfíoras céanna, rachaidh na Ballstáit i dtrácht i gcomhar le chéile chun a chinneadh cé acu ceann a dhéanfaidh na ciontóirí a ionchúiseamh ionas, más féidir, na himeachtaí a lárú in aon Bhallstát amháin. Chuige sin, féadfaidh na Ballstáit dul ar iontaoibh aon chomhlacht nó meicníocht atá bunaithe san Aontas Eorpach d'fhonn an comhar idir na húdaráis bhreithiúnacha a éascú agus a ngníomhaíocht a chomhordú. Tabharfar aird ar dhóigh leanúnach ar na cúinsí seo a leanas:

- is é an Ballstát an Ballstát ar ar a chríoch a rinneadh na gníomhartha,
- is é an Ballstát an Ballstát ar náisiúnach nó cónaitheoir dá chuid an déantóir,
- is é an Ballstát Ballstát tionscnaimh na n-íospartach,
- is é an Ballstát an Ballstát ar ar a chríoch a fuarthas an déantóir.

3. Glacfaidh gach Ballstát na bearta is gá chun a dhlínse a bhunú freisin maidir leis na cionta dá dtagraítear in Airteagail 1 go 4 i gcásanna nuair a dhiúltaíonn sé duine faoi amhras ciona nó duine arna chiontú i gcion den sórt sin a ghéilleadh nó a eiseachadh chuig Ballstát eile nó chuig tríú tír.

4. Déanfaidh gach Ballstát a áirithiú go bhfolaíonn a dhlínse cásanna ina ndearnadh aon cheann de na cionta dá dtagraítear in Airteagail 2 agus 4 go hiomlán nó go páirteach ar a chríoch, is cuma cá bhfuil an grúpa sceimhlitheoireachta bunaithe nó cá saothraíonn sé a chuid gníomhaíochtaí coiriúla.

5. Ní eisíafaídh an tAirteagal seo dlínse a fheidhmiú in ábhair choiriúla mar atá arna leagan síos ag Ballstát i gcomhréir lena reachtaíocht náisiúnta.

Airteagal 10

Íospartaigh a chosaint agus cuidiú leo

1. Déanfaidh na Ballstáit a áirithiú nach bhfuil imscrúduithe ar na cionta nó ionchúiseamh na gcionta atá folaithe sa Treoirchinneadh seo ag brath ar thuarascáil nó cúiseamh ó dhuine is íospartach, ar a laghad má rinneadh na gníomhartha ar chríoch an Bhallstáit.

2. I dteannta leis na bearta atá leagtha síos i dTreoirchinneadh 2001/220/CGB ón gComhairle an 15 Márta 2001 maidir le seasamh na n-íospartach in imeachtaí coiriúla¹, glacfaidh gach Ballstát, más gá, gach beart is féidir chun cúnaimh iomchuí a áirithiú do theaghlaigh na n-íospartach.

Airteagal 11

Cur chun feidhme agus tuarascálacha

1. Glacfaidh na Ballstáit na bearta is gá chun an Treoirchinneadh seo a chomhlíonadh faoi cheann 31 Nollaig 2002.

¹ IO L82, 22.3.2001, lch.1.

[2005.]

*Criminal Justice (Terrorist
Offences) Act 2005.*

[No. 2.]

SCH.1 Pt.1

2. Faoi cheann 31 Nollaig 2002, díreoidh na Ballstáit chuig Ard-Rúnaíocht na Comhairle agus chuig an gCoimisiún téacs na bhforálacha a thrasúinn ina ndlí náisiúnta na hoibleagáidí arna bhforchur orthu faoin Treoirchinneadh seo. Ar bhonn tuarascáil arna tarraingt suas ar an bhfaisnéis sin agus ar bhonn tuarascáil ón gCoimisiún, measúnóidh an Chomhairle, faoi cheann 31 Nollaig 2003, an bhfuil na bearta is gá glactha ag na Ballstáit chun an Treoirchinneadh seo a chomhlíonadh.

3. Sonróidh an tuarascáil ón gCoimisiún, ach go háirithe, trasú na hoibleagáide dá dtagraítear in Airteagal 5(2) i ndlí coiriúil na mBallstát.

Airteagal 12

Cur i bhfeidhm críochach

Beidh an treoirchinneadh seo infheidhme ar Ghiobráltar.

Airteagal 13

Teacht i bhfeidhm

Tiocfaidh an Treoirchinneadh seo i bhfeidhm ar lá a fhoilsithe in Iris Oifigiúil na gComhphobal Eorpach.

Arna dhéanamh i Lucsamburg, an 13 Meitheamh 2002.

Thar ceann na Comhairle

An tUachtarán

M. RAJOY BREY

PART 2

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on combating terrorism

(2002/475/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

(1) The European Union is founded on the universal values of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of

¹ OJ C 332 E, 27.11.2001, p. 300.

² Opinion delivered on 6 February 2002 (not yet published in the Official Journal).

democracy and the principle of the rule of law, principles which are common to the Member States.

(2) Terrorism constitutes one of the most serious violations of those principles. The La Gomera Declaration adopted at the informal Council meeting on 14 October 1995 affirmed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development.

(3) All or some Member States are party to a number of conventions relating to terrorism. The Council of Europe Convention of 27 January 1977 on the Suppression of Terrorism does not regard terrorist offences as political offences or as offences connected with political offences or as offences inspired by political motives. The United Nations has adopted the Convention for the suppression of terrorist bombings of 15 December 1977 and the Convention for the suppression of financing terrorism of 9 December 1999. A draft global Convention against terrorism is currently being negotiated within the United Nations.

(4) At European Union level, on 3 December 1998 the Council adopted the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice³. Account should also be taken of the Council Conclusions of 20 September 2001 and of the Extraordinary European Council plan of action to combat terrorism of 21 September 2001. Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999, and of the Santa María da Feira European Council of 19 and 20 June 2000. It was also mentioned in the Commission communication to the Council and the European Parliament on the biannual update of the scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (second half of 2000). Furthermore, on 5 September 2001 the European Parliament adopted a recommendation on the role of the European Union in combating terrorism. It should, moreover, be recalled that on 30 July 1996 twenty-five measures to fight against terrorism were advocated by the leading industrialised countries (G7) and Russia meeting in Paris.

(5) The European Union has adopted numerous specific measures having an impact on terrorism and organised crime, such as the Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property⁴; Council Joint Action 96/610/JHA of 15 October 1996 concerning the creation and maintenance of a Directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union⁵; Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network⁶, with responsibilities in terrorist offences, in particular Article 2; Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union⁷; and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups⁸.

³ OJ C 19, 23.1.1999, p. 1.

⁴ OJ C 26, 30.1.1999, p. 22.

⁵ OJ L 273, 25.10.1996, p. 1.

⁶ OJ L 191, 7.7.1998, p. 4.

⁷ OJ L 351, 29.12.1998, p. 1.

⁸ OJ C 373, 23.12.1999, p. 1.

(6) The definition of terrorist offences should be approximated in all Member States, including those offences relating to terrorist groups. Furthermore, penalties and sanctions should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences.

(7) Jurisdictional rules should be established to ensure that the terrorist offence may be effectively prosecuted.

(8) Victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them.

(9) Given that the objectives of the proposed action cannot be sufficiently achieved by the Member States unilaterally, and can therefore, because of the need for reciprocity, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

(10) This Framework Decision respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they emerge from the constitutional traditions common to the Member States as principles of Community law. The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.

(11) Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties are not governed by this Framework Decision,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Terrorist offences and fundamental rights and principles

1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organisation to perform or abstain from performing any act, or
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation,

shall be deemed to be terrorist offences:

- (a) attacks upon a person's life which may cause death;
- (b) attacks upon the physical integrity of a person;
- (c) kidnapping or hostage taking;
- (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- (i) threatening to commit any of the acts listed in (a) to (h).

2. This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Offences relating to a terrorist group

1. For the purposes of this Framework Decision, 'terrorist group' shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

2. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:

- (a) directing a terrorist group;
- (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

*Article 3***Offences linked to terrorist activities**

Each Member State shall take the necessary measures to ensure that terrorist-linked offences include the following acts:

- (a) aggravated theft with a view to committing one of the acts listed in Article 1(1);
- (b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);
- (c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b).

*Article 4***Inciting, aiding or abetting, and attempting**

1. Each Member State shall take the necessary measures to ensure that inciting or aiding or abetting an offence referred to in Article 1(1), Articles 2 or 3 is made punishable.

2. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offence referred to in Article 1(1)(i), is made punishable.

*Article 5***Penalties**

1. Each Member State shall take the necessary measures to ensure that the offences referred to in Articles 1 to 4 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 1(1) and offences referred to in Article 4, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those impossible under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences impossible are already the maximum possible sentences under national law.

3. Each Member State shall take the necessary measures to ensure that offences listed in Article 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in Article 2(2)(a), and for the offences listed in Article 2(2)(b) a maximum sentence of not less than eight years. In so far as the offence referred to in Article 2(2)(a) refers only to the act in Article 1(1)(i), the maximum sentence shall not be less than eight years.

*Article 6***Particular circumstances**

Each Member State may take the necessary measures to ensure that the penalties referred to in Article 5 may be reduced if the offender:

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent or mitigate the effects of the offence;
 - (ii) identify or bring to justice the other offenders;
 - (iii) find evidence; or
 - (iv) prevent further offences referred to in Articles 1 to 4.

Article 7

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 1 to 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person;
- (c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 1 to 4 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 1 to 4.

Article 8

Penalties for legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;

- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 9

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 1 to 4 where:

- (a) the offence is committed in whole or in part in its territory. Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State;
- (b) the offence is committed on board a vessel flying its flag or an aircraft registered there;
- (c) the offender is one of its nationals or residents;
- (d) the offence is committed for the benefit of a legal person established in its territory;
- (e) the offence is committed against the institutions or people of the Member State in question or against an institution of the European Union or a body set up in accordance with the Treaty establishing the European Community or the Treaty on European Union and based in that Member State.

2. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to any body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential account shall be taken of the following factors:

- the Member State shall be that in the territory of which the acts were committed,
- the Member State shall be that of which the perpetrator is a national or resident,
- the Member State shall be the Member State of origin of the victims,
- the Member State shall be that in the territory of which the perpetrator was found.

3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 1 to 4 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.

4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 2 and 4 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.

5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.

Article 10

Protection of, and assistance to, victims

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed on the territory of the Member State.

2. In addition to the measures laid down in the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹, each Member State shall, if necessary, take all measures possible to ensure appropriate assistance for victims' families.

Article 11

Implementation and reports

1. Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2002.

2. By 31 December 2002, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a report from the Commission, the Council shall assess, by 31 December 2003, whether Member States have taken the necessary measures to comply with this Framework Decision.

3. The Commission report shall specify, in particular, transposition into the criminal law of the Member States of the obligation referred to in Article 5(2).

Article 12

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 13

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

¹ OJ L 82, 22.3.2001, p. 1.

SCHEDULE 2

Section 4.

OFFENCES FOR PURPOSES OF DEFINITIONS OF “TERRORIST
ACTIVITY” AND “TERRORIST-LINKED ACTIVITY”

PART 1

*(Paragraph (a) of definition of “terrorist activity”)**Common law offences*

1. The following common law offences:

- (a) murder;
- (b) manslaughter;
- (c) rape.

Non-fatal offences against the person

2. An offence under any of the following provisions of the Non-Fatal Offences against the Person Act 1997:

- (a) section 3 (assault causing harm);
- (b) section 4 (assault causing serious harm);
- (c) section 6 (syringe and other attacks);
- (d) section 12 (poisoning);
- (e) section 13 (endangerment);
- (f) section 14 (endangering traffic);
- (g) section 15 (false imprisonment).

Offence of torture

3. Any offence under section 2 of the Criminal Justice (United Nations Convention Against Torture) Act 2000.

Sexual offences

4. An offence under any of the following provisions of the Criminal Law (Rape) (Amendment) Act 1990:

- (a) section 2 (sexual assault);
- (b) section 3 (aggravated sexual assault);
- (c) section 4 (rape under section 4).

Criminal damage

5. Any offence under section 2 (damaging property) of the Criminal Damage Act 1991.

Malicious damage

6. An offence under any of the following provisions of the Malicious Damage Act 1861:

- (a) section 35 (maliciously obstructing railways);
- (b) section 36 (obstructing engines or carriages on railways);

- (c) section 37 (damaging telegraphs);
- (d) section 48 (removing or concealing buoys, etc.).

Offences relating to aircraft and vehicles

7. An offence under any of the following provisions:

- (a) section 11 of the Air Navigation and Transport Act 1973 (unlawful seizure of aircraft);
- (b) section 3 of the Air Navigation and Transport Act 1975 (unlawful acts against the safety of aviation);
- (c) section 10 of the Criminal Law (Jurisdiction) Act 1976 (unlawful seizure of vehicles, etc.).

Offences relating to explosives

8. An offence under any of the following provisions of the Explosive Substances Act 1883:

- (a) section 2 (causing explosion likely to endanger life or damage property);
- (b) section 3 (making or possessing, etc., explosives with intent to endanger life or property);
- (c) section 4(1) (making or possessing explosives in suspicious circumstances).

Offences relating to firearms and other weapons

9. An offence under any of the following provisions:

- (a) section 2 of the Firearms Act 1925 (restrictions on possession, use and carriage of firearms);
- (b) section 10 of the Firearms Act 1925 (restrictions on manufacture and sale of firearms);
- (c) section 15 of the Firearms Act 1925 (possessing firearms or ammunition with intent to endanger life or cause serious injury to property);
- (d) section 26 of the Firearms Act 1964 (possessing firearms while taking vehicle without authority);
- (e) section 27 of the Firearms Act 1964 (using firearms to resist arrest or aid escape);
- (f) section 27A of the Firearms Act 1964 (possessing firearms or ammunition in suspicious circumstances);
- (g) section 27B of the Firearms Act 1964 (carrying firearms with criminal intent).

Offences relating to chemical weapons, nuclear material and other dangerous substances

10. An offence under any of the following provisions:

- (a) section 3 of the Chemical Weapons Act 1997 (chemical weapons);

- (b) section 4 of the Chemical Weapons Act 1997 (possession of listed toxic chemicals and precursors);
- (c) section 38 of the Radiological Protection Act 1991 (offences relating to nuclear material);
- (d) section 61 of the Post Office Act 1908 (prohibition of placing injurious substances in or against post office letter boxes);
- (e) section 63(1)(a) of the Post Office Act 1908 (prohibition of sending dangerous substances by post).

Offences under this Act

11. An offence under any of the following provisions of this Act:

- (a) section 9 (offence of hostage-taking);
- (b) section 10 (offence of terrorist bombing);
- (c) section 11 (offences against internationally protected persons).

PART 2

(Paragraph (a)(i) of definition of “terrorist-linked activity”)

Aggravated burglary and robbery

12. An offence under any of the following provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001:

- (a) section 13 (aggravated burglary);
- (b) section 14 (robbery).

Blackmail, extortion, etc.

13. Any offence under section 17 (blackmail, extortion and demanding money with menaces) of the Criminal Justice (Public Order) Act 1994.

PART 3

(Paragraph (b)(i) of definition of “terrorist-linked activity”)

Forgery Offences

14. An offence under any of the following provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001 in so far as that offence relates to an instrument within the meaning of paragraph (a), (e), (f), (j), (k), (l), (m), (n), (o) or (p) of the definition of “instrument” in section 24 of that Act:

- (a) section 25 (forgery);
- (b) section 26 (using a false instrument);
- (c) section 27 (copying false instrument);
- (d) section 28 (using copy of false instrument);
- (e) section 29 (custody or control of certain false instruments, etc.).

SCHEDULE 3

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

The States Parties to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

REAFFIRMING the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

CONSIDERING that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited,

BEING CONVINCED that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

- (a) Attempts to commit an act of hostage-taking, or
- (b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking

likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

- (a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;
- (b) Exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

- (a) In its territory or on board a ship or aircraft registered in that State;
- (b) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;
- (c) In order to compel that State to do or abstain from doing any act; or
- (d) With respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to

enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) The State where the offence was committed;
- (b) The State against which compulsion has been directed or attempted;
- (c) The State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
- (d) The State of which the hostage is a national or in the territory of which he has his habitual residence;
- (e) The State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;
- (f) The international intergovernmental organization against which compulsion has been directed or attempted;
- (g) All other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) To be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1(b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall

transmit the information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

- (a) That the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or
- (b) That the person's position may be prejudiced:
 - (i) for any of the reasons mentioned in subparagraph (a) of this paragraph, or
 - (ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1

as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims¹ or the Protocols Additional to those Conventions² are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those treaties.

¹ United Nations, *Treaty Series*, vol. 75, p. 31, 85, 135 and 287.

² *Ibid.*, vol. 1125, pp. 3 and 609.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 18 December 1979.

SCHEDULE 4

CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES
AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING
DIPLOMATIC AGENTS

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and co-operation among States,

Considering that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for co-operation among States,

Believing that the commission of such crimes is a matter of grave concern to the international community,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Internationally protected person" means:
 - (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;
 - (b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;
2. "Alleged offender" means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in article 2.

Article 2

1. The intentional commission of:
 - (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

- (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;
- (c) a threat to commit any such attack;
- (d) an attempt to commit any such attack; and
- (e) an act constituting participation as an accomplice in any such attack;

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

- (a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State;
- (c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 4

States Parties shall co-operate in the prevention of the crimes set forth in article 2, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;
- (b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 5

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States

concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

Article 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the crime was committed;
- (b) the State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;
- (c) the State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;
- (d) all other States concerned; and
- (e) the international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and
- (b) to be visited by a representative of that State.

Article 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 8

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

Article 9

Any person regarding whom proceedings are being carried out in connexion with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 11

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 12

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

Article 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 14

This Convention shall be opened for signature by all States, until 31 December 1974 at United Nations Headquarters in New York.

Article 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 16

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 18

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

Article 19

The Secretary-General of the United Nations shall inform all States, *inter alia*:

- (a) of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 14, 15 and 16 and of notifications made under article 18;
- (b) of the date on which this Convention will enter into force in accordance with article 17.

Article 20

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

SCHEDULE 5

*Section 10.*INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST
BOMBINGS

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, *inter alia*, “the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States”,

Noting that the Declaration also encouraged States “to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter”,

Recalling further General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Noting also that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. “Infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.

3. “Explosive or other lethal device” means:

- (a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
- (b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.

4. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.

5. “Place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. “Public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

- (a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or
- (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or
- (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1 or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or

[No. 2.] *Criminal Justice (Terrorist Offences) Act 2005.* [2005.]

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if

that person is a stateless person, the State in the territory of which that person habitually resides;

- (b) Be visited by a representative of that State;
- (c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1(c) or 2(c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 15

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

- (a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including

measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

- (b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;
- (c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

Article 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of

those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

SCHEDULE 6

OFFENCES AGAINST INTERNATIONALLY PROTECTED PERSONS

PART 1

(specified offences referred to in section 11(1)(a))

Common law offences.

1. The following common law offences:

- (a) murder;
- (b) manslaughter;
- (c) rape.

Non-fatal offences against the person.

2. An offence under any of the following provisions of the Non-Fatal Offences against the Person Act 1997:

- (a) section 2 (assault);
- (b) section 3 (assault causing harm);
- (c) section 4 (assault causing serious harm);
- (d) section 6 (syringe and other attack);
- (e) section 12 (poisoning);
- (f) section 13 (endangerment);
- (g) section 15 (false imprisonment).

Sexual offences.

3. An offence under any of the following provisions of the Criminal Law (Rape) (Amendment) Act 1990:

- (a) section 2 (sexual assault);
- (b) section 3 (aggravated sexual assault);
- (c) section 4 (rape under section 4).

Offences relating to explosives.

4. An offence under section 2 (causing explosion likely to endanger life or damage property) of the Explosive Substances Act 1883.

PART 2

(specified offences referred to in section 11(1)(b))

Offences relating to explosives.

5. An offence under section 2 (causing explosion likely to endanger life or damage property) of the Explosive Substances Act 1883.

Criminal damage and other offences.

6. An offence under any of the following provisions:

- (a) section 2 of the Criminal Damage Act 1991 (damaging property);
- (b) section 10 of the Criminal Law (Jurisdiction) Act 1976 (unlawful seizure of vehicles, etc.);
- (c) section 63(1)(a) of the Post Office Act 1908 (prohibition of sending dangerous substances by post).

SCHEDULE 7

Part 4.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM

Preamble

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

Recalling also all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex thereto on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any

way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3(a) to (f) of its resolution 51/210 of 17 December 1996,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit.

2. "State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
 - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.
2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
- (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
 - (c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
 - (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals who have committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State;
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;
- (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
- (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b),

committed in an attempt to compel that State to do or abstain from doing any act;

- (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2

may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

- (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
- (b) Be visited by a representative of that State;
- (c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the

sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on

mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

- (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
- (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:
 - (i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
 - (ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

- (iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
- (iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

- (a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;
- (b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

- (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;
- (b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
 - (i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
 - (ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 23

1. The annex may be amended by the addition of relevant treaties that:

- (a) Are open to the participation of all States;
- (b) Have entered into force;
- (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties that have deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

ANNEX

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.

2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic

[2005.]

*Criminal Justice (Terrorist
Offences) Act 2005.*

[No. 2.]

SCH.7

Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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**ACHT UM CHEARTAS COIRIÚIL (CIONTA
SCEIMHLITHEOIREACHTA) 2005
CRIMINAL JUSTICE (TERRORIST OFFENCES)
ACT 2005**

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Act is to give effect to a number of international instruments directed to terrorism and to meet commitments which the State has undertaken as part of the European Union and the broader international community, including commitments arising from United Nations Security Council Resolution 1373 adopted in response to the events of September 11th, 2001. The Act is also intended to amend our law more generally to enhance the capacity of the State to address the problem of international terrorism.

The principal purpose of the Act is to enable effect to be given in our law to the:

- European Union Framework Decision on Combating Terrorism;
- International Convention against the Taking of Hostages;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- International Convention for the Suppression of Terrorist Bombings; and the
- International Convention for the Suppression of the Financing of Terrorism.

The Act makes provision for a number of additional measures directed in particular to the financing of terrorism and terrorist groups for the purpose of complementing the Convention for the Suppression of the Financing of Terrorism.

This Act also provides for the retention of communications data (Part 7) and amends the European Arrest Warrant Act 2003 (Part 8).

PART 1 (Sections 1 - 3)

PRELIMINARY MATTERS

This Part defines certain terms used in the Act and provides for the bringing into force of the Act.

Section 1 (Short title)

Section 1 provides that the short title of the Act is the Criminal Justice (Terrorist Offences) Act 2005.

Section 2 (Commencement)

Section 2 provides that the Act will come into operation on enactment except for section 32, which will come into operation 4 months after the passing of the Act.

Section 3 (Interpretation)

Section 3 provides for the definition of certain terms used in the Act and for the circumstances in which a person will be considered to be resident or habitually resident in the State.

PART 2 (Sections 4 - 7)

SUPPRESSION OF TERRORIST GROUPS AND TERRORIST OFFENCES

Introduction

The purpose of this Part is to give effect to the framework decision on Combating Terrorism adopted by the Council of the European Union on 13 June, 2002. Article 34 of the Treaty on European Union provides that the Council may adopt framework decisions for the purpose of the approximation of the laws and regulations of the Member States. It also provides that framework decisions will be binding on the Member States as to the result to be achieved, but will leave to the national authorities the choice of form and methods. The Framework Decision on Combating Terrorism is directed to the approximation of the laws of the Member States in relation to a common definition of terrorist offences, including offences relating to terrorist groups. The Framework Decision also provides for the establishment of extraterritorial jurisdiction in relation to those offences in certain circumstances and for the penalties which they should attract. Dáil and Seanad Éireann approved the participation in the adoption of the Framework Decision on 12 December, 2001 following political agreement on its terms at the Justice and Home Affairs Council on 6 and 7 December, 2001.

Section 4 (Definitions for Part 2)

This defines terms for the purpose of Part 2. Key definitions include “terrorist activity” and “terrorist-linked activity”.

“Terrorist activity” is defined by reference to offences under our law which are committed in or outside the State with the intent of seriously intimidating a population, unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, economic or social structures of a state or an international organisation. The specified offences for the purpose of the definition of terrorist activity are set out in Part 1 of Schedule 2 and comprise those offences under Irish law which correspond to the specified categories of intentional acts set out in Article 1 of the Framework Decision.

“Terrorist-linked activity” is similarly defined by reference to certain further specified offences under our law committed in or outside the State for the purpose of engaging in terrorist activity or in connection with the offences of membership and the new offence, as provided for in section 49 of this Act, of providing assistance to an unlawful organisation under the Offences against the State Act 1939. The other specified offences are set out in Parts 2 and 3 of Schedule 2 and comprise those offences which correspond to specified categories of intentional acts set out in Article 3 of the Framework Decision.

“Terrorist group” is defined by reference to the Framework Decision, i.e. a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences.

Section 5 (Terrorist Groups)

Section 5 makes provision for terrorist groups as defined in section 4 by way of application of the relevant provisions of the Offences against the State Acts, 1939 to 1998, to such groups for the purposes of Article 2 of the Framework Decision.

Subsection (1) provides that terrorist groups which engage in, promote, encourage or advocate the commission of terrorist activity in or outside the State will be unlawful organisations for the purposes of the Offences against the State Acts, 1939 to 1998, and section 3 of the Criminal Law Act 1976.

Subsection (2) provides that the Offences against the State Acts, 1939 to 1998, and section 3 of the Criminal Law Act 1976 will apply to terrorist groups with any necessary modifications. *Subsection (3)* provides that subsections (1) and (2) are not limited by any other provision of the Act which refers to specific provisions of those Acts and *subsection (4)* provides that subsections (1) and (2) will apply whether the terrorist group is based in or outside the State.

Section 6 (Terrorist offences)

Section 6 makes provision for terrorist offences.

Subsection (1)(a) provides that a person who engages in terrorist activity or terrorist linked activity in or outside the State is guilty of an offence. It also makes attempting to engage in terrorist activity or in terrorist linked activity and threatening to engage in terrorist activity in or outside the State an offence. *Subsection 1(b)* provides for certain specified offences relating to unlawful organisations also to be offences when committed outside the State. The offences specified for this purpose comprise the offences of membership of, providing assistance to, and directing, an unlawful organisation. Subsection (1) is made subject to subsections (2) to (4).

Subsections (2) and *(3)* govern the circumstances in which acts committed outside the State will be offences for the purposes of subsection (1) and correspond to those under which there is a requirement to take extra-territorial jurisdiction in Article 9 of the Framework Decision. *Subsection (2)* provides that subsection (1) will apply in relation to acts committed outside the State where the act is

- (a) committed on board an Irish ship,
- (b) committed on an aircraft registered in the State,
- (c) committed by a person who is a citizen or is resident in the State,
- (d) committed for the benefit of a legal person established in the State,
- (e) directed against the State or Irish citizens, or
- (f) directed against EU institutions or bodies set up in the State.

Subsection (3) provides that the acts described in subsection (1) will also be offences when committed outside the State in circumstances other than those provided for in subsection (2) but in those cases the taking of proceedings is made subject to section 43 of the

Act. Sections 43(2) and 43(3) place restrictions on the taking of proceedings in respect of those offences consistent with the requirement in the Framework Decision to take jurisdiction where a request for extradition is made and is refused.

Subsection (4) provides that subsection (1) will not apply in respect of the activities of armed forces during an armed conflict insofar as those activities are governed by international humanitarian law, or the activities of armed forces of a state in the exercise of their official duties insofar as those activities are governed by other rules of international law.

Subsection (5) ensures that engagement in protest, advocacy, dissent or industrial action will not, of itself, fall within the definition of terrorist activity. To fall within the definition, an offence committed during the course of such activity would have to be a terrorist offence within the meaning of the Act.

Subsection (6) provides that the consent of the Attorney General to a prosecution is required in cases where a person is charged with an offence, in or outside the State, with the intention of unduly compelling a government of a state, other than a Member State of the European Union, to perform or abstain from performing an act, or of seriously destabilising or destroying the political, constitutional, economic or social structures of such a state. This provision allows for consideration by the Attorney General of all the facts where the activity is directed against a state outside the EU.

Subsections (7) and (8) make provision for a rebuttable presumption in certain circumstances in relation to the intent required for the purposes of committing the offence of engaging in or attempting to engage in terrorist activity. *Subsection (7)* provides that where a person is proved to have committed, or to have attempted to commit, an act that constitutes or would constitute an offence specified in the Part 1 of Schedule 2 and the court is satisfied, having regard to all the circumstances, that it is reasonable to assume that the act was committed with the required intent, the person will be presumed to have committed the act with such intent unless the contrary is shown. *Subsection (8)* provides for certain specified circumstances which a court may take into account for this purpose. These are whether the act created or was likely to create a collective danger to the lives or the physical integrity of persons, caused or was likely to cause serious damage to a state or international organisation, caused or was likely to result in major economic loss, and any other matters that a court considers relevant.

Subsection (9) makes provision for the Director of Public Prosecutions to co-operate with the prosecuting authorities of other EU Member States and mechanisms established within the European Communities to facilitate co-operation between judicial authorities with a view to centralising prosecution in a single Member State in circumstances where more than one Member State has jurisdiction to try a person for a terrorist offence.

Section 7 (Penalties)

Section 7 makes provision for penalties in respect of terrorist offences as required by Article 5 of the Framework Decision.

Subsection (1) provides that a person guilty of an offence under section 6(1)(a) will be liable to a penalty which is determined by reference to the penalty which would be imposable for the same offence when committed without the special intent required for terrorist offences. The penalty imposable will be the same where it is a

sentence of imprisonment fixed by law or imprisonment for life and enhanced maximum penalties will be available in other cases.

Subsection (2) provides that a person guilty of an offence under section 6(1)(b) will be liable to the same penalty which would be imposed in relation to the same act committed in the State. *Subsection (3)* defines the expression “corresponding offence” for the purposes of the section.

PART 3 (Sections 8 - 11)

SUPPRESSION OF HOSTAGE-TAKING, TERRORIST BOMBING AND CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS

Introduction

The purpose of this Part is to give effect to three United Nations Conventions dealing with Suppression of Hostage-Taking, Terrorist Bombing and Crimes Against Internationally Protected Persons. The International Convention against the Taking of Hostages was adopted by the General Assembly of the United Nations on 17 December, 1979. The Convention on the Protection and Punishment of Crimes against Internationally Protected Persons was adopted by the General Assembly of the United Nations on 14 December, 1973. The Convention on the Suppression of Terrorism Bombing was adopted by the General Assembly of the United Nations on 15 December, 1997. Ireland signed the latter Convention on 29 May, 1998 but the two other Conventions are no longer open for signature but may be acceded to following enactment of this Act. The provisions of this Part will therefore allow Ireland to accede to or ratify these Conventions.

Section 8 (Interpretation)

This is a definition section, the purpose of which is to identify the relevant Conventions.

Section 9 (Offence of Hostage Taking)

This section sets out the definition of the offence of hostage-taking.

Subsection (1) provides that a person is guilty of the offence of hostage-taking if he or she, in or outside the State, seizes or detains another person, and threatens to kill, injure or continue to detain the hostage in order to compel a state, an international intergovernmental organisation, a person or a group of persons to do, or abstain from doing, any act. *Subsection (2)* makes it an offence to attempt to commit the offence of hostage-taking.

While *subsection (1)* provides that the offence can be committed inside or outside the State, this subsection and *subsection (2)* are subject to *subsections (3)* and *(4)* which provide for the circumstances in which the offences can be committed outside the State.

Subsection (3) provides that subsections (1) and (2) apply to an act committed outside the State if—

- (a) the act is committed on board an Irish ship,
- (b) the act is committed on an aircraft registered in the State,
- (c) the act is committed by a citizen of Ireland or by a stateless person habitually resident in the State,

- (d) the act is committed in order to compel the State to do or abstain from doing an act, or
- (e) the hostage is a citizen of Ireland.

Subsection (4) provides that the acts described in *subsections (1)* and *(2)* will also be offences when committed outside the State in circumstances other than those referred to in *subsection (3)*, but in those cases the taking of proceedings is made subject to *section 43* of the Act. *Sections 43(2)* and *43(3)* place restrictions on the taking of proceedings in respect of those offences consistent with the requirement in the Convention to take jurisdiction where a request for extradition is made and refused.

Subsection (5) provides that *subsections (1)* and *(2)* will not apply in respect of any act of hostage-taking that constitutes a grave breach of the Geneva Conventions of 1949 and the Additional Protocols to those Conventions, as referred to in the Geneva Conventions Act 1962.

Subsection (6) provides that a person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

Section 10 (Offence of terrorist bombing)

This section creates the offences related to terrorist bombing.

Subsection (1) provides that a person is guilty of an offence if he or she, in or outside the State, unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility, with intent to cause death or serious bodily injury.

Subsection (2) provides that a person is guilty of an offence if he or she, in or outside the State,

- (a) unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place, facility or system referred to in any paragraph of *subsection (1)* with intent to cause extensive destruction to that place, facility or system, and
- (b) the destruction results in or is likely to result in major economic loss.

Subsection (3) provides that a person who attempts to commit an offence under *subsection (1)* or *(2)* is guilty of an offence.

While in *subsections (1)* and *(2)* the offence is stated to occur whether it is committed in or outside the State, these subsections as well as *subsection (3)* are subject to *subsections (4)* and *(5)* which provide for the circumstances in which the offences can be committed outside the State.

Subsection (4) provides that the behaviour described in *subsections (1)* to *(3)* is an offence if committed outside the State if the act is committed—

- (a) on board an Irish ship,
- (b) on an aircraft registered in or operated by the State,

- (c) by a citizen of Ireland or by a stateless person habitually resident in the State,
- (d) against a citizen of Ireland,
- (e) against a state or government facility of the State abroad, including an embassy or other diplomatic or consular premises of the State, or
- (f) in order to compel the State to do or abstain from doing an act.

Subsection (5) provides that the acts described in *subsections (1) to (3)* will also be offences when committed outside the State in circumstances other than those referred to in *subsection (4)*, but in those cases the taking of proceedings is made subject to *section 43* of the Act. *Sections 43(2) and 43(3)* place restrictions on the taking of proceedings in respect of those offences consistent with the requirement in the Convention to take jurisdiction where a request for extradition is made and refused.

Subsection (6) provides that *subsections (1) to (3)* do not apply in respect of the activities of armed forces during an armed conflict insofar as those activities are governed by international humanitarian law, or the activities of military forces of a state in the exercise of their official duties insofar as those activities are governed by other rules of international law.

Subsection (7) provides that a person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life. *Subsection (8)* provides that a word or expression that is used in the section has the same meaning as it has in the Terrorist Bombing Convention. *Subsection (9)* defines explosive or other lethal device which is in keeping with the definition in the Convention.

Section 11 (Offences against internationally protected persons)

Section 11 deals with offences against the person, liberty or property of internationally protected persons.

Subsection (1)(a) provides that an act done outside the State against an internationally protected person, that, if done in the State, would constitute one of the offences specified in *Part 1 of Schedule 6*, is an offence punishable as if done in the State. *Subsection 1(b)* provides that an act done outside the State in connection with an attack on premises or vehicles of internationally protected persons that, if done in the State, would constitute an offence specified in *Part 2 of Schedule 6*, is an offence punishable as if done in the State.

Subsection (2) provides that it is an offence to attempt or threaten to commit an offence under *subsection (1)*.

While in *subsection (1)* the offence is stated to occur when it is committed outside the State, *subsection (1)* and *(2)* are subject to *subsections (3) and (4)* which provide for the circumstances in which the offences can be committed outside the State.

Subsection (3) provides that *subsections (1) and (2)* apply to an act committed outside the State if the act is committed—

- (a) on board an Irish ship,
- (b) on an aircraft registered in the State,
- (c) by a citizen of Ireland, or

(d) against a person who enjoys the status of an internationally protected person by virtue of functions exercised on behalf of the State.

Subsection (4) provides that the acts described in *subsections (1)* and *(2)* will also be offences when committed outside the State in circumstances other than those referred to in *subsection (3)*, but in those cases the taking of proceedings is made subject to *section 43* of the Act. *Sections 43(2)* and *43(3)* place restrictions on the taking of proceedings in respect of those offences consistent with the requirement in the Convention to take jurisdiction where a request for extradition is made and refused.

Subsection (5) provides that a person guilty of an offence under this section is liable on conviction to the same penalty applicable if the offence had been committed in the State, but for the offence of threatening to commit an offence the sanction is imprisonment for a term not exceeding 10 years.

Subsection (6) provides that a word or expression that is used in this section has the same meaning as in the Internationally Protected Persons Convention, subject to *subsection (7)*.

Subsection (7) provides for the definition of internationally protected person.

PART 4 (Sections 12 - 42)

SUPPRESSION OF FINANCING OF TERRORISM

Introduction

The purpose of this Part is primarily to provide in Irish law the measures necessary to enable ratification by Ireland of the 1999 United Nations Convention for the Suppression of the Financing of Terrorism (the Convention). It does this by creating a new offence of financing terrorism and inserting into the Criminal Justice Act 1994, (the 1994 Act) a scheme for freezing and confiscating funds used or allocated for use in connection with the offence of financing terrorism, or funds that are the proceeds of such an offence. This Part also introduces a procedure based on the Proceeds of Crime Act 1996, (the 1996 Act) for the freezing, restraint or confiscation of funds, by means of a court order, in the possession or control of a person that are being used or may be intended for use in committing, or facilitating the commission of, a terrorist offence or an offence of financing terrorism. This procedure is provided for in sections 14 to 20 and the scheme based on the 1994 Act is provided for at sections 21 to 42.

Section 12 (Interpretation of Part 4)

This defines terms for the purpose of Part 4. The term “funds” is similar to the definition in Article 1 of the Convention.

Section 13 (Offence of financing terrorism)

Subsection (1) creates an offence of financing terrorism, based on the offence defined in Article 2.1 of the Convention. It provides that a person is guilty of the offence of financing terrorism if he or she, in or outside the State, directly or indirectly, unlawfully and wilfully, provides, collects or receives funds intending that they be used or knowing that they will be used to carry out an act that is an offence under Irish law and within the scope of a treaty listed in the annex to the Convention, or any other act that is intended to cause death

or serious bodily injury to a civilian or other person not taking part in an armed conflict, the purpose of which is to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act.

The Conventions listed in the annex to the Convention are the:

Convention for the Suppression of Unlawful Seizure of Aircraft;

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;

International Convention against the Taking of Hostages;

Convention on the Physical Protection of Nuclear Material;

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.

International Convention for the Suppression of Terrorist Bombings.

Subsection (2) extends the scope of the offence under subsection (1) to attempts to commit the offence.

Subsection (3) creates a further offence of financing terrorism so as to include funds that are intended for use, or knowing that they will be used, for the benefit or purposes of a terrorist group, as defined in section 4 of this Act, or to carry out a terrorist act (other than one referred to in *subsection (1)*) that is an offence under section 6. This is aimed at incorporating the terrorist offences created in Part 2 of this Act as offences for which it will be an offence to finance and is additional to the requirements of the Convention.

Subsection (4) extends the scope of the offence in *subsection (3)* to attempts to commit the offence.

Subsection (5) ensures that an offence is committed under *subsections (1)* or *(3)(b)* whether or not the funds are actually used to carry out a terrorist act.

Subsections (6) and *(7)* provide for the circumstances in which acts committed outside the State will be offences. In keeping with the Convention, *subsections (1)* and *(2)* apply to acts committed outside the State if the act—

(a) is committed on board an Irish ship,

(b) is committed on an aircraft registered in or operated by the State,

- (c) is committed by a citizen of Ireland or by a stateless person habitually resident in the State,
- (d) is directed towards or results in the carrying out of an act referred to in *subsection (1)* in the State or against a citizen of Ireland,
- (e) is directed towards or results in the carrying out of an act referred to in *subsection (1)* against a State or Government facility abroad, including an embassy or other diplomatic or consular premises of the State, or
- (f) is directed towards or results in the carrying out of an act referred to in *subsection (1)* in an attempt to compel the State to do or abstain from doing any act.

Subsection (7) provides that the acts described in *subsections (1)* and *(2)* will also be offences when committed outside the State in circumstances other than those referred to in *subsection (6)*, but in those cases the taking of proceedings is made subject to *section 43* of the Act. *Sections 43(2)* and *43(3)* place restrictions on the taking of proceedings in respect of those offences consistent with the requirement in the Convention to take jurisdiction where a request for extradition is made and refused.

Subsection (8) establishes the penalty structure for the offences of financing terrorism. The penalties range from the maximum that can be imposed by the District Court for minor manifestations of the offence to an unlimited fine and/or up to 20 years imprisonment on conviction on indictment.

Section 14 (Interim order freezing certain funds)

This section mirrors section 2 of the 1996 Act. Where the High Court is satisfied, on foot of an *ex parte* application to it by a member of the Garda Síochána of at least Chief Superintendent rank, that a person possesses or controls funds that are being used or may be intended for use in committing, or facilitating the commission of, a terrorist offence or a terrorist financing offence, it may prohibit a person from disposing of the funds for a period not exceeding 40 days, as may be specified by the Court, or diminishing their value over that period. The order may contain whatever provisions, conditions and restrictions are deemed to be necessary or expedient by the Court.

Section 15 (Interlocutory order)

This section mirrors section 3 of the 1996 Act. Where the High Court is satisfied, on foot of an application by a member of the Garda Síochána of at least Chief Superintendent rank, that a person possesses or controls funds that were being used or may be intended for use in committing or facilitating the commission of a terrorist offence or a terrorist financing offence, it shall make an order prohibiting a person from disposing of the funds or diminishing their value. The order cannot be made if the Court is satisfied that to do so would result in a serious risk of injustice and, when made, it may contain whatever provisions, conditions and restrictions are deemed necessary or expedient by the Court.

Section 16 (Disposal order)

This section mirrors section 4 of the 1996 Act. It becomes relevant when an interlocutory order under *section 15* of this Act has been in operation for at least 7 years in respect of funds. After that time, the High Court, on application by a member of the Garda Síochána of

at least Chief Superintendent rank, may by order direct that all or part of the funds be transferred to either the Minister for Finance or some other person determined by the Court. Such transfer can be subject to such terms and conditions as the court may specify. The Court will make a disposal order unless it is satisfied that the funds were not used nor intended for use in committing or facilitating a terrorist offence or a terrorist financing offence or that there would be a serious risk of injustice.

Section 17 (Ancillary orders and provision in relation to certain profits or gains, etc.)

This section mirrors section 5 of the 1996 Act. It empowers the High Court, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, to make orders that will enable an interim or interlocutory order to have full effect. It also provides that any order *under section 14, 15 or 16* of this Act can be expressed to apply to any profit, gain or interest, any dividend or other payments or any other funds.

Section 18 (Evidence and proceedings relating to interim and other orders)

This section largely mirrors section 8 of the 1996 Act. It provides that a statement by a member of the Garda Síochána not below the rank of Chief Superintendent that he or she believes that the funds in respect of which an interim or interlocutory order is sought are in the possession or control of the respondent and are used or intended for use in committing or facilitating a terrorist offence or a terrorist financing offence is a statement of evidence in the matter. The High Court must be satisfied that there are reasonable grounds for that belief.

The standard of proof required to determine any question arising under *sections 14, 15, 16, 17, 19 and 20* is that applicable to civil proceedings (as in the 1996 Act).

Section 19 (Compensation)

This section mirrors section 16 of the 1996 Act. It sets out the circumstances in which an order under *sections 14, 15 or 16* can lead to the payment of compensation to a person by the Minister for Finance as the Court considers just in respect of any loss incurred by the person concerned.

Section 20 (Application of certain provisions of Act of 1996)

Rather than unnecessarily repeat sections 6, 7 and 9 to 15 of the 1996 Act, this section provides that they will apply, with necessary modifications, to an interim, interlocutory or disposal order made under this Part of this Act.

Section 21 (Amendment of section 3 of Act of 1994)

This section extends the scope of some definitions in the interpretation section of the 1994 Act and introduces some new definitions. This is necessary as areas of the 1994 Act are being extended to include within its parameters an offence of financing terrorism (at present the 1994 Act is largely concerned with drug trafficking offences and offences other than drug trafficking offences which would not be terrorism financing offences). The confiscation and restraint provisions relating to these other offences do not at present comprehend offences of financing terrorism.

Section 22 (Amendment of Part II of Act of 1994 — new sections 8A to 8E)

This section inserts five new sections (8A to 8E) after section 8 of the 1994 Act. These new sections give effect in Irish law to the relevant provisions of Article 8 of the Convention.

Section 8A: Confiscation orders relating to offence of financing terrorism.

This section empowers the courts to make confiscation orders against persons convicted of an offence of financing terrorism who hold funds subject to confiscation. “*Funds subject to confiscation*” is defined as “funds used or allocated for use in connection with an offence of financing terrorism or funds that are the proceeds of such an offence.” The procedures provided in this section are similar to those in section 4 of the 1994 Act relating to the confiscation of the benefits of drug trafficking.

Section 8B: Assessing the value of funds subject to confiscation.

This section makes provision for assessing the value of a person’s funds subject to confiscation. A court can make certain assumptions (set out in *subsection (2)*) for the purpose of assessing the value of funds subject to confiscation. The onus of proving that the assumptions are inapplicable is placed on the defendant. The section is similar to section 5 of the 1994 Act concerning the value of a person’s proceeds from drug trafficking.

Section 8C: Amount to be recovered under a confiscation order made under section 8A.

This section provides that the amount to be recovered under a confiscation order shall be equal to the amount assessed by the court to be the value of the defendant’s funds subject to confiscation. It is similar to section 6 of the 1994 Act relating to the value of the proceeds of drug trafficking.

Section 8D: Re-assessment of whether defendant holds funds subject to confiscation.

This section provides a mechanism for re-assessing whether a defendant holds funds subject to confiscation in cases where a court has previously determined that he or she did not hold such funds. It can arise where new evidence, not considered by the court in its original determination, is provided in an application to the court by the Director of Public Prosecutions. No such application will be determined by the court if it is made more than 6 years after the defendant was convicted. The section is similar to section 7 of the 1994 Act concerning the re-assessment of whether a defendant has benefited from drug trafficking.

Section 8E: Revised assessment of funds subject to confiscation

This section allows the Director of Public Prosecutions to make, or cause to be made, an application to the court when of the opinion that the real value of the funds subject to confiscation is greater than that originally assessed by the court to be the amount to be recovered under a confiscation order. The court, if satisfied that the real value is greater than the assessed value, can make a fresh determination of the amount to be recovered. The section is similar to section 8 of the 1994 Act concerning revised assessments of the proceeds of drug trafficking.

Section 23 (Amendment of section 9 of Act of 1994)

This is a technical amendment to section 9 of the 1994 Act (*Confiscation orders: offences other than drug trafficking offences*) which will ensure that confiscation orders relating to an offence of

financing terrorism are not confused with, or dealt with similarly to, confiscation orders relating generally to offences other than drug trafficking offences. The offences of financing terrorism will be separate specified offences under the relevant insertions into, and amendments to, the 1994 Act which are being made in this Act.

Section 24 (Amendment of section 10 of Act of 1994)

This section inserts into section 10 of the 1994 Act (*Statements relevant to making confiscation orders*) provision for the tendering to a court by the Director of Public Prosecutions and the defendant of statements about matters relating to the making of confiscation orders which, in the case of a conviction for an offence of financing terrorism, shows that the defendant holds funds subject to confiscation. At present, section 10 of the 1994 Act is concerned with matters relevant to the determination of whether, in the case of a conviction for a drug trafficking offence, the defendant has benefited from drug trafficking and in the case of a conviction for an offence other than drug trafficking, he or she has benefited from that offence and has obtained property as a result of or in connection with the commission of that offence and the benefit is the value so obtained. The statements under this section will narrow down the areas of dispute between the parties and thus assist the court in its task of assessing whether a confiscation order should be made against the defendant and, if so, the amount to be recovered under the order.

Section 25 (Amendment of section 11 of Act of 1994)

Section 11 of the 1994 Act (*Provision of information by defendant*) allows a court to order a defendant to provide whatever information it requires in connection with a confiscation hearing in the case of drug trafficking and other offences. This amendment ensures that that provision also applies to confiscation hearings relating to an offence of financing terrorism.

Section 26 (Amendment of section 12 of Act of 1994)

Section 12 of the 1994 Act (*Supplementary provisions concerning confiscation orders*) deals with matters relating to the making of confiscation orders which are not dealt with in other sections. Subsection (1) of section 12 of the 1994 Act enables the court in deciding whether to make a confiscation order to take account of the possibility that victims of the offender may have civil claims against the offender in respect of the conduct constituting the offence. That provision does not apply to non-drug trafficking confiscation orders and the amendment to subsection (1) will ensure that it will also not apply to financing of terrorism confiscation orders.

Subsection (4) of section 12 of the 1994 Act provides that where the court is satisfied as to any matter relevant to determining the amount that might be realised from the property available for confiscation, it may issue a certificate setting out its opinion. The effect of the amendment to subsection (4) is to extend that provision in the case of a conviction for an offence of financing terrorism to the value of the funds subject to confiscation.

Section 27 (Amendment of section 13 of Act of 1994)

Section 13 of the 1994 Act (*Power of High Court where defendant has died or is absent*) provides for the making of confiscation orders by the High Court where an offender dies or absconds. The amendments to section 13 will ensure that the power of the High Court in that respect will include the making of a confiscation order against a defendant in the case of a conviction for an offence of financing terrorism.

Section 28 (Amendment of section 17 of Act of 1994)

Section 17 of the 1994 Act (*Variation of confiscation orders made by virtue of section 13*) applies in cases where the High Court made a confiscation order where the defendant has absconded and has later ceased to be an absconder. This amendment extends the provisions of section 17 of the 1994 Act to include funds subject to confiscation in the case of an offence of financing terrorism. The effect of this is that if the defendant or Director of Public Prosecutions applies to the High Court and the High Court is satisfied of certain matters, it may make a fresh determination of the value of the defendant's funds subject to confiscation.

Section 29 (Amendment of section 18 of Act of 1994)

In amending section 18 of the 1994 Act (*Increase in value of realisable property*), this section is concerned with the situation where, in the case of an offence of financing terrorism, confiscation is ordered for an amount which is less than the amount assessed to be the value of the person's funds subject to confiscation, and it subsequently comes to light that a greater amount is available to satisfy a confiscation order.

Section 30 (Amendment of section 23 of Act of 1994)

Section 23 of the 1994 Act (*Cases in which restraint orders may be made*) defines the circumstances in which the High Court may make restraint orders under section 24 of that Act with the intention of ensuring that funds will be available to satisfy any confiscation order that might be imposed under section 4 (drug trafficking offences) or 9 (other offences). This amendment allows the High Court to also make restraint orders in respect of an offence of financing terrorism. The High Court may make a restraint order where proceedings have been instituted or an application has been made in respect of the defendant under section 7, 8, 8D, 8E, 13 or 18, the proceedings or application have or has not concluded and either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that such an order may be made. The High Court may also make a restraint order where it is satisfied that proceedings are to be instituted and it appears that a confiscation order may be made in connection with this offence.

Section 31 (Amendment of section 28 of Act of 1994)

Section 28 of the 1994 Act (*Bankruptcy of defendant, etc.*) governs the relationship between bankruptcy proceedings and the restraint and confiscation proceedings set out in that Act, where a person who holds realisable property is adjudged bankrupt. Subsection (3) of section 28 is concerned with the situation where a person who is adjudicated bankrupt has made a gift caught by the Act. No decision whether a gift is void can be made under section 57, 58 or 59 of the Bankruptcy Act 1988 when, inter alia, an application has been made in respect of the defendant under sections 7, 8, 13 or 18 of the 1994 Act and has not been concluded. The effect of this amendment is to add to those provisions applications under section 8D (Re-assessment of whether defendant holds funds subject to confiscation) and 8E (Revised assessment of funds subject to confiscation). This amendment ensures that funds subject to confiscation for an offence of financing terrorism are fully comprehended by section 28.

Section 32 (Amendment of section 32 of Act of 1994)

Section 32 of the 1994 Act (*Measures to be taken to prevent money laundering*) imposes obligations on banks and financial bodies ("designated bodies") to take certain measures (e.g., identification

of customers) to prevent and assist in the detection of money laundering. Subsection 9A of the 1994 Act, inserted by section 14 of the Criminal Justice (Miscellaneous Provisions) Act, 1997, obliges a designated body to adopt measures to prevent and detect the commission of an offence under section 31 (*Money laundering etc.*) of the 1994 Act. This amendment to subsection 9A obliges a designated body to also adopt measures to prevent and detect the commission of an offence of financing terrorism. The amendment to subsection 9B of section 32 of the 1994 Act (also inserted by the 1997 Act) makes a similar change in relation to the training of directors, other officers and employees of designated bodies for the purpose of enabling them to identify transactions which may relate to the commission of an offence of financing terrorism.

Section 33 (Amendment of section 46 of Act of 1994)

Section 46 of the 1994 Act (*External confiscation orders, etc.*) provides a procedure for the enforcement, by means of orders under Irish law, of orders made by the courts of designated countries for the confiscation of property which is liable to confiscation in accordance with orders made by the court in the other country for the purpose of the recovery of payments or other rewards received as a result of or in connection with drug trafficking or its value. Similarly, it provides for the recovery of property obtained as a result of or in connection with conduct corresponding to an offence for which a confiscation order could be made under section 9 of that Act or the value of such property. This amendment to section 46 of the 1994 Act extends that procedure to the recovery of funds corresponding to funds subject to confiscation under this Act.

Section 34 (Amendment of section 47 of Act of 1994)

Section 47 of the 1994 Act (*External forfeiture orders, etc.*) provides a procedure for the enforcement, by means of orders under Irish law, of orders made by the courts of designated countries for the forfeiture of property in respect of which an offence to which the section applies has been committed or which was used or intended to be used in connection with the offence. These orders are known as “external forfeiture orders”. The amendment to this section adds an offence of financing terrorism to the offences to which section 47 of the 1994 Act applies.

Section 35 (Amendment of section 55 of Act of 1994)

Section 55 of the 1994 Act (*Search etc. for material relevant to investigation outside State*) provides that in designated countries the provisions of Irish law authorising a judge of the District Court to issue a search warrant for obtaining evidence of an offence shall apply so as to authorise the issue of a similar warrant for obtaining evidence of a similar offence under the law of the designated country. The purpose of this amendment is to include in section 55 of the 1994 Act references to an offence of financing terrorism — that section already covers drug trafficking and offences in respect of which a confiscation order can be made under section 9 of the 1994 Act.

Section 36 (Amendment of section 57 of Act of 1994)

This amendment to section 57 of the 1994 Act (*Disclosure of information*) extends the obligation of persons or bodies (designated bodies) under section 32 of the 1994 Act to report any suspicion to the Garda Síochána of an offence of financing terrorism being committed or having been committed in relation to the business of the person or body. A person charged in law with the supervision of

such a person or body is likewise obliged to report any such suspicion. Similar obligations already apply, under section 57 of the 1994 Act, to a money laundering etc., offence.

Section 37 (Amendment of section 58 of Act of 1994)

This section amends subsection (1) of section 58 of the Act of 1994 (*Offences of prejudicing investigation*) so that it will be an offence for a person who knows or suspects that an order in relation to an investigation into whether a person holds funds subject to confiscation has been made or applied for, or a search warrant has been issued, to make any disclosure which is likely to prejudice the investigation. Section 58 already makes that provision in relation into drug trafficking and other offences in respect of which a confiscation order can be made.

Section 38 (Amendment of section 61 of Act of 1994)

Section 61 of the 1994 Act (*Forfeiture orders*) empowers a court to order the forfeiture of property which is used or intended for use in the commission of a crime or is unlawfully in a person's possession. Section 17 of the Offences against the State (Amendment) Act 1998 inserted a new subsection (1A) into section 61 of the 1994 Act. It states that where a person has been convicted of one of the offences referred to in the section, including explosive substances and fire-arms offences, and a forfeiture order may be made in the case of that person, the court shall make the forfeiture order unless it is satisfied that there would be a serious risk of injustice if it made the order. The purpose of this amendment is to add terrorist offences under section 6 of this Act to the offences listed in the above mentioned subsection (1A).

Section 39 (Amendment of section 63 of Act of 1994)

The purpose of section 63 of the 1994 Act (*Order to make material available*) is to allow the Garda Síochána to apply to the District Court, for the purpose of an investigation into drug trafficking, a money laundering offence or an offence in respect of which a confiscation order might be made, for an order for any relevant material or access to it. The purpose of this amendment is to add the commission of an offence of financing terrorism and whether a person holds funds subject to confiscation to the offences for which a member of the Garda Síochána may apply to a judge of the District Court for the purpose of such an investigation.

Section 40 (Amendment of section 64 of Act of 1994)

Section 64 of the 1994 Act (*Authority for search*) enables a member of the Garda Síochána to apply to the District Court for a search warrant in connection with investigations into drug trafficking or an offence under section 31 of the 1994 Act (*Money laundering etc.*) or an investigation into whether a person has benefited from drug trafficking or an offence in respect of which a confiscation order can be made under section 9 of that Act. The effect of this amendment is to add to those offences for which a search warrant may be applied investigations into the commission of an offence of financing terrorism and whether a person holds funds subject to confiscation.

Section 41 (Amendment of section 65 of Act of 1994)

Section 65 of the 1994 Act (*Compensation*) empowers the High Court to order compensation to be paid to a person in circumstances where the person's property is affected by an order of restraint or realisation under that Act and the proceedings to which those orders relate do not result in his or her conviction or the conviction is quashed. The purpose of this amendment is to add an offence of

financing terrorism to the offences in respect of which compensation can be paid in such circumstances.

Section 42 (Power to make regulations)

This section empowers the Minister for Finance to make regulations directed to freezing terrorist funds which will enable breach of the regulations to be an indictable offence. At present, breach of such regulations can only be tried summarily. The regulations will enable acts adopted by the institutions of the European Communities which, in the opinion of the Minister for Finance, are for the purpose of, or will contribute to, combating terrorism through the adoption of specific restrictive measures, directed at persons, groups or entities, for the identification, detection, freezing or seizure of their assets of any kind, to have full effect.

PART 5 (Sections 43 - 47)

MISCELLANEOUS MATTERS

Introduction

This Part makes provision for a number of matters relating to proceedings in connection with offences under the Act, including provision for offences committed outside the State, evidentiary matters and liability for offences by bodies corporate.

Section 43 (Proceedings relating to offences committed outside the State)

Subsection (1) provides that proceedings for an offence under *sections 6, 9, 10, 11 or 13(1) or (2)* committed outside the State can be taken anywhere in the State and may be treated as if the offence had been committed in that place.

Subsection (2) provides that the consent of the Director of Public Prosecutions is required for a prosecution for those offences, subject to the usual qualification permitting the exercise of the ordinary powers of arrest, charge and remand in appropriate cases.

Subsection (3) provides for the circumstances in which the Director may take or consent to the taking of further proceedings in relation to offences committed outside the State, under the provisions specified in *subsection (1)*, in the circumstances referred to in *sections 6(3), 9(4), 10(5), 11(4) or 13(7)*. The circumstances concerned relate to where a request for extradition under Part II of the Extradition Act, 1965, has been made and has been refused or where a European Arrest Warrant has been received from an issuing state for the purpose of bringing proceedings and a final determination has been made that the European Arrest Warrant should not be endorsed or that the person should not be surrendered or where because of special circumstances (including the likelihood of refusal of extradition/surrender) it is expedient that proceedings be taken against the person.

Subsection (4) clarifies the relevant Convention or provisions of the relevant Convention to which references in *subsection (3)* relate.

Section 44 (Evidence in proceedings under the Act)

Section 44 provides for evidentiary matters relating to certain terms and circumstances provided for in the Act and allows for evidence by certificate.

Section 45 (Liability for offences by bodies corporate)

This is a standard provision which enables persons working in a body corporate as well as the body corporate itself to be proceeded against for an offence under the Act.

Section 46 (Double jeopardy)

Because parties to the Conventions and the Framework Decision are required to take extraterritorial jurisdiction over offences, prosecutions for the same act would be possible in a number of countries. This section takes account of that by providing that where a person has been acquitted or convicted outside the State of an offence, then the person shall not be proceeded against for an offence under the Act in respect of the act constituting the first-mentioned offence.

Section 47 (Expenses)

This is a standard provision providing for the payment of any expenses arising under the Act be paid out of money provided by the Oireachtas.

PART 6 (Sections 48 - 60)

AMENDMENT OF OTHER ACTS

Introduction

This Part makes provision for certain amendments to the Offences against the State Acts 1939-1998, as well as amendments to certain other Acts arising from changes in the law being made in earlier Parts of the Act.

This Part will also make provision for a new procedure in connection with the existing provision in section 22 of the Offences against the State Act 1939 (1939 Act) providing for the forfeiture of the property of unlawful organisations in respect of which a suppression order has been made. Section 22 of the 1939 Act provides that all such property shall become and be forfeited to and vested in the Minister for Justice, Equality and Law Reform. The Offences against the State (Amendment) Act 1985, (1985 Act) makes provision for a dedicated procedure whereby moneys held in a bank on behalf of an unlawful organisation may be recovered by the Minister. This Part will supplement the 1985 Act by providing for a procedure whereby property, other than moneys held in a bank, may be recovered and is based in part on the 1985 Act and in part on the Proceeds of Crime Act 1996, (1996 Act).

Section 48 (Amendment of Section 21 of Act of 1939)

Section 48 will increase the maximum penalty for membership of an unlawful organisation by amending section 21 of the 1939 Act. The section provides that a person found guilty of this offence will be liable to a fine of up to €3,000 and/or imprisonment for up to 12 months in the case of a summary conviction, and an unlimited fine and/or imprisonment for up to 8 years in the case of a person found guilty on conviction on indictment.

Section 49 (Amendment of Act of 1939 — new section 21A)

Section 49 will create a new offence by inserting a new section (section 21A) into the 1939 Act. It provides that it will be an offence to knowingly render assistance to an unlawful organisation in the performance or furtherance of an unlawful object. A person found guilty of this new offence will be liable to the same penalties as those provided in the preceding section in the case of membership.

Section 50 (Amendment of section 22 of Act of 1939)

Section 50 amends section 22 of the 1939 Act to update and extend the definition of property in that section in line with the provision being made in section 21 of the Act for the purposes of the Criminal Justice Act 1994.

Section 51 (Amendment of Act of 1939 — new sections 22A to 22I)

This section inserts nine new sections (22A to 22I) after section 22 of the 1939 Act and provides for a new procedure directed to the recovery of the property of unlawful organisations, other than moneys held in a bank, which stands forfeited to the Minister by virtue of section 22. These new sections provide as follows:—

Section 22A: Definitions for, and operation of, sections 22B to 22I

This section provides for certain definitions used for the purposes of the new procedure. The “Minister” is defined as the Minister for Justice, Equality and Law Reform.

Section 22B: Interim order respecting specified property

This section, which is based on section 2 of the 1985 Act and section 2 of the 1996 Act, makes provision whereby the High Court may, on the *ex parte* application of the Minister, make an interim order in respect of specified property which the Minister is of the opinion is the property of an unlawful organisation and is forfeited and vested in the Minister by virtue of section 22 of the 1939 Act. Provision is also made for an interim order to be discharged on the application of any person claiming ownership of the property where the court is satisfied that the property is not the property of an unlawful organisation and for the interim order to lapse twelve months after it is made unless an application for a disposal order in respect of the property is brought during that period.

Section 22C: Disposal order respecting specified property

This section, which is based on section 4 of the 1996 Act, provides for the making of a disposal order by the High Court which authorises the Minister to dispose of the property which is the subject of the interim order on the application of the Minister unless the High Court is satisfied that the property concerned is not the property of an unlawful organisation. Provision is made for notice of any application for a disposal order to be given to any person named in the interim order and any other persons whom the court may direct, and for any person claiming ownership of the property to be given an opportunity to be heard before an order is made.

Section 22D: Ancillary orders and provision in relation to certain profits or gains, etc.

This section, which is based on section 5 of the 1996 Act, makes provision for the making of ancillary orders to enable an interim order to have full effect.

Section 22E: Evidence

This section, which is based on section 5 of the 1985 Act, provides that production in court in any proceedings of a document signed by the Minister and stating that property specified in the document would, but for the operation of section 22, have been the property of an unlawful organisation, shall be evidence of that fact unless the contrary is shown.

Section 22F: Seizure of certain property

This section, which is based on section 15 of the 1996 Act, authorises members of the Gardaí and officers of customs and excise to seize property which is the subject of an interim or disposal order in order to prevent its removal from the State.

Section 22G: Compensation

This section, which is based on section 16 of the 1996 Act, provides for the circumstances in which a payment of compensation in respect of any loss incurred by a person may be ordered by the High Court arising from the making of an interim or disposal order.

Section 22H: Application of certain provisions of Act of 1996

This section makes provision for the application of sections 6, 7 and 9 to 13 of the 1996 Act with necessary adaptations for the purposes of interim and disposal orders made under this Part.

Section 22I: Immunity from proceedings

This section, which is based on section 14 of the 1996 Act, provides for immunity from proceedings for persons arising from their compliance with an interim or disposal order.

Section 52: Amendment of section 38 of Act of 1939.

Section 49 of the Offences Against the State Act 1939 provides that if two or more Special Criminal Courts are in existence at the time of sending forward a person for trial, the Director of Public Prosecutions must apply to try the case in the court he selects. For the purposes of the operation of section 49, this section provides that a court established under the Act is only in existence if it has not fewer than three members appointed to it.

Section 53: Amendment of section 49 of Act of 1939.

This provision amends section 49 of the Offences against the State Act 1939 to provide for the transfer of a case from a Special Criminal Court (to which the case has been returned for trial) to another Special Criminal Court. Section 53 amends section 49 of the Act of 1939 by renumbering it as section 49(1) and adding a number of new subsections.

Subsection (2) provides that a trial that is to be heard before a Special Criminal Court may be transferred by the Court, on its own motion or on the application of a triable person or the Director of Public Prosecutions, to another Special Criminal Court, but only if the first Court decides that it would be in the interests of justice to do so.

Subsection (3) provides that in deciding whether it is in the interests of justice to transfer a trial, the Special Criminal Court may consider any factors it thinks relevant, including (a) whether the transfer would be in the interests of the expeditious administration of justice, and (b) whether the transfer would prejudice the triable person or persons or the prosecution.

Subsection (4) provides that a trial may be transferred under this section notwithstanding that an order has been made under subsection (1)(e) in relation to the triable person or persons. Subsection 1(e) provides that if two or more Special Criminal Courts are in existence, the DPP can apply to a court to have the trial before that court.

Subsection (5) provides that where two or more triable persons are to be tried jointly, the decision of the Special Criminal Court to transfer the trial applies in relation to all of them.

Subsection (6) provides that subsection (5) does not affect the right of a triable person to apply for a separate trial and, if the application is granted, then to apply for a transfer of that trial.

Subsection (7) provides that the decision of a Special Criminal Court to transfer a trial is final and unappealable.

Subsection (8) defines “triable person”.

Section 54 (Amendment and commencement of Section 2 of Act of 1985)

Section 54 amends section 2 of the 1985 Act.

The effect of the amendment will be to provide that the powers under section 2 of the 1985 Act come into operation on the enactment of the Act.

Section 55 (Amendment of Section 8 of Act of 1985)

Section 55 will amend section 8 of the 1985 Act to make clear that property, other than moneys, held by a person for the benefit or use of an unlawful organisation is also deemed to be the property of that organisation.

Section 56 (Amendment of Defence Act 1954)

This section provides for the restatement and amendment of section 169 and the amendment of section 192 of the Defence Act 1954. Section 169, as amended by the Criminal Justice Act 1990, deals with the trial of civil offences by court-martial. Section 169(3) provides that where a person, charged under the section, is convicted by court-martial of certain offences (e.g. genocide) that person will be punished accordingly. *Paragraph (a)* of *section 56* restates and amends section 169(3) to provide that where a person is convicted by court-martial of an offence under the Act, the person will be liable to the penalty provided for that offence on conviction by a criminal court.

Section 192 of the Defence Act 1954, deals with the jurisdiction of courts-martial. Subsection (2) provides that a limited court-martial will not have jurisdiction to try certain offences (e.g. treason and murder) and subsection (3) provides that a court-martial shall not have jurisdiction to try any person subject to military law for certain offences (e.g. treason, murder, manslaughter, rape and genocide) unless the offence was committed while the person was on active service. *Paragraphs (b)* and *(c)* of *section 56* will provide that the offences under the Act will also be excluded from the jurisdiction of courts-martial in similar circumstances.

Section 57 (Amendment of Extradition Act 1965)

The purpose of subsection 1 of *section 57* is to meet the requirements imposed by Article 14 of the International Convention for the Suppression of the Financing of Terrorism 1999 and Article 11 of the International Convention for the Suppression of Terrorist Bombings, 1997. *Section 57(1)* will amend section 3(1) of the Extradition Act 1965, to provide that offences under *section 10* and *section 13* of the Act cannot be regarded as political offences for the purposes of extradition.

Subsection (2) expands the definition of ‘country’ in section 3(1) of the 1965 Act to enable Ireland to be in a position to enter into extradition agreements with territories as well as countries.

Subsection (3) amends section 8 of the 1965 Act. Section 8 provides for the making of orders by the Minister for Foreign Affairs to give effect in Irish law to extradition arrangements between Ireland and other countries. As with subsection (2), the term “country” is being expanded to allow for treaties with a range of territories.

Section 58 (Amendment of Extradition (Amendment) Act 1994)

This section will amend the First Schedule to the Extradition (Amendment) Act, 1994, in order to include offences under *section 6(1)(a), 9 and 11* of the Act. This will mean that these offences cannot be regarded as political offences for the purpose of extradition between parties to the European Convention on the Suppression of Terrorism.

Section 59 (Amendment of Criminal Procedure Act 1967)

Section 59 amends the Criminal Procedure Act 1967, in two respects. In effect, it provides (*paragraph (a)*) that a person charged with the offence of murder or attempted murder contrary to *sections 6 or 11* of the Act may not, on a plea of guilty, be dealt with summarily in the District Court or sent forward for sentence and that in these cases (*paragraph (b)*) applications for bail must go to the High Court.

Section 60 (Amendment of Bail Act 1997)

The Bail Act 1997, provides that bail may be refused to a person charged with a serious offence where it is considered necessary to prevent the commission of a serious offence. Serious offences are defined by reference to the Schedule in the Act. This section provides for the offences being created by the Act to be considered serious offences for bail purposes.

PART 7 (Sections 61 - 67)

COMMUNICATIONS DATA

This Part provides for the retention of communications data by communications service providers for the purposes of the prevention, detection, investigation or prosecution of crime (including terrorist offences) or the safeguarding of the security of the State. It also introduces safeguards against misuse of the retained data by extending the duties of the designated judge and complaints referee under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 to the data retention provisions of this Part.

Section 61 (Interpretation of this Part)

Section 61 defines terms for the purposes of *Part 7*. Any word or expression used but not defined in this Part and is defined in Directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 has the same meaning in this Part as in the Directive. That Directive is concerned with the processing of personal data and protection of privacy in the electronic communications sector.

Section 62 (Application of this Part)

Section 62 establishes the parameters of the communications data provisions. *Part 7* applies only to telephony data and it is made clear that it does not apply to the content of communications.

Section 63 (Retention of traffic and location data relating to communications by phone).

Directions issued in 2002 under section 110(1) of the Postal and Telecommunications Services Act 1983 by the Minister for Public Enterprise to telecommunications service providers obliged those providers to retain data for not less than 3 years. This was to enable the providers to comply with any request by the Garda Síochána under section 98(2B) of the 1983 Act to make a disclosure under section 98(2A) of that Act. *Section 63* places on a full statutory basis the power of the Garda Commissioner to request service providers to retain data for a period of 3 years for the purposes of (1) the prevention, detection, investigation or prosecution of crime, including terrorist crime or (2) the safeguarding of the security of the State. Any service provider receiving the request is required to retain data for 3 years for the above purposes.

Section 64 (Access to data retained for law enforcement and security purposes).

Where a service provider has received a request under *section 63*, a member of the Garda Síochána not below the rank of chief superintendent or a member of the Permanent Defence Force not below the rank of colonel may request, under *section 64*, the provider to disclose specified data for which access is required. In the case of the Garda Síochána, the request must be for the purposes of the prevention, investigation, detection or prosecution of crime, including terrorist crime or the safeguarding of the security of the State. In the case of a request from the Permanent Defence Force, the request must be for the safeguarding of the security of the State. The disclosure request must be made in writing but in cases of exceptional urgency a request may be made orally and confirmed in writing within 24 hours. The data can only be disclosed to the senior member of the Garda Síochána or senior officer of the Permanent Defence Force who made the disclosure request.

A service provider has a duty of complying with a disclosure request.

Section 65 (Complaints procedure)

Section 65 extends the complaints procedure in the Interception of Postal Packets and Telecommunications (Regulation) Act 1993 to the data retention provisions in this Part. The Complaints Referee who holds office under the 1993 Act will have similar functions under this Part. A person who believes that data that relates to him or her that are in the possession of a service provider have been accessed following a disclosure request may apply to the Referee to investigate the matter. If an application is neither frivolous nor vexatious, the Referee will investigate whether a disclosure request has been made and, if so, whether the provisions of *section 64* have been contravened. If the Referee concludes that there has been a contravention of *section 64* he or she will notify the applicant in writing and make a report of his or her findings to the Taoiseach. The Referee may also order the destruction of the data and/or make a recommendation for the payment of compensation to the applicant. Where the Referee concludes that no contravention of *section 64* has taken place, he or she will notify the applicant in writing to that effect.

For the purpose of an investigation into whether a disclosure request has been made and, if so, whether the provisions of *section 64* have been complied with, the Referee is entitled to access and inspect all relevant official documents. Also any person who was concerned in or has information relating to a relevant disclosure request is obliged to give such information to the Referee if requested to do so by the Referee.

Section 66 (Amendment of section 8 of Act of 1993).

Under section 8 of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 the President of the High Court, following consultations with the Minister for Justice, Equality and Law Reform, invites a judge of the High Court to undertake the duties specified under that section and if the judge accepts the invitation, the Government designates him or her for the purposes of the 1993 Act. *Section 66* amends section 8 of the 1993 Act by extending the duties of the designated judge to include those specified in *section 67* of this Act. If the judge accepts the invitation to undertake the duties specified under both the 1993 Act and this Act, the Government will designate him or her for the purposes of both Acts.

The designation will not affect the functions of the Data Protection Commissioner under section 10 of the Data Protection Act 1988 under which the Commissioner has the power to investigate, or cause to be investigated, whether any of the provisions of the 1988 Act have been, are being, or are likely to be contravened.

Section 67 (Duties of designated judge in relation to this Part)

Section 67 sets out the additional duties of the designated judge under *Part 7* of this Act. He or she will have the duty of keeping the provisions of *Part 7* under review, of ascertaining whether the Garda Síochána and the Permanent Defence Force are complying with its provisions and of including in his or her report to the Taoiseach such matters relating to *Part 7* that the judge considers appropriate. In carrying out his or her duties under this section, the designated judge has the power to investigate any case in which a disclosure request was made and for that purpose is entitled to access and inspect any document relating to the request. Any person who has information relevant to a disclosure request is required to make that information available, on request, to the judge.

The designated judge may communicate with the Taoiseach or the Minister for Justice, Equality and Law Reform about disclosure requests. The judge may also communicate with the Data Protection Commissioner in connection with the Commissioner's functions under the Data Protection Acts. Reports by the judge to the Taoiseach on such matters as the judge considers appropriate relating to the general operation of the 1993 Act and to *Part 7* of this Act are made at intervals of not more than 12 months and such reports are laid by the Taoiseach before each House of the Oireachtas with, if necessary, a statement as to whether any matter has been excluded from them. Following consultations with the designated judge, the Taoiseach may make such an exclusion if the Taoiseach considers that publication of such matter would be prejudicial to the prevention or detection of crime or to the security of the State.

PART 8 (Sections 68 - 83)

EUROPEAN ARREST WARRANT

Introduction

Part 8 amends the European Arrest Warrant Act 2003. That Act gave effect to the EU Framework Decision on the European arrest warrant and the surrender procedures between Member States.

Section 68 (Application of this Part)

Section 68 defines the scope of application of this Part of the Act. The amendments effected by this Part will apply to European arrest

warrants that are endorsed under section 13, or produced under section 14(7), of the EAW Act, following enactment of this Act.

Section 69 (Issuing state presumed to comply with Framework Decision)

This section inserts a new section 4A in the European Arrest Warrant Act 2003. Its purpose is to provide for a general presumption that the issuing state will comply with the requirements of the Framework Decision on the European Arrest Warrant, unless the contrary is shown.

Section 70 (Corresponding offences)

This section substitutes section 5 of the European Arrest Warrant Act 2003. It provides a specified point in time by reference to which correspondence of offences (under Irish law and the law of the issuing state) is to be established, i.e. it provides that “correspondence” is to be established by reference to the position on the date of issue of the EAW.

Section 71 (Obligation to surrender)

This section substitutes section 10 of the European Arrest Warrant Act 2003. It outlines who may be subject to surrender under a European arrest warrant, i.e. a person against whom the issuing state intends to bring proceedings or is the subject of proceedings or a person who has been convicted but not yet sentenced or a person on whom a sentence of imprisonment or detention has been imposed (in respect of an offence to which the European arrest warrant relates).

Section 72 (European arrest warrant)

This section amends section 11 of the European Arrest Warrant (EAW) Act 2003. Section 72(a) substitutes subsection (1) and inserts subsection (1A) in section 11 of the EAW Act.

Subsection (1) deals with the form of the EAW and provides that it shall, in so far as practicable, be in the form set out in the Annex to the Framework Decision. As a result, an EAW that does not follow the form in the Annex in every detail may still be accepted.

Subsection (1A) deals with content and sets out the information to be provided in the EAW. It identifies the matters about which details must be provided while also providing that details about e-mail address, etc need only be provided where they are available.

Section 72(b) adds a new subsection (2A) to section 11 of the EAW Act and provides that where it is not practicable to supply in the EAW any information required by subsection (1A), such information may be supplied in a separate document.

Section 72(c) deletes subsection (3) of section 11 of the EAW Act (section 79 of this Act now deals with this issue).

Section 73 (Amendment of section 12 of the Act of 2003)

In subsections (2), (5), (6) and (8)(b) of section 12 of the EAW Act, the words “or issuing state” are being added after “judicial authority”. This will allow the “issuing judicial authority” or other relevant authority in the “issuing state” to supply any undertakings required.

Section 73(b) inserts a new subsection (3A) in section 12 of the EAW Act; it provides that any undertakings required under the EAW Act may be set out in the arrest warrant or provided in a separate document.

Section 73(c) and (d) substitute subsections (4) and (5) of section 12 of the EAW Act and paragraph (g) adds a new paragraph (c) to subsection (8) of section 12. These provisions clarify that European arrest warrants, any undertakings that are required under the EAW Act and, where appropriate, translations thereof, may be transmitted on or on behalf of the issuing judicial authority to the Central Authority in the State using a facsimile machine. It also provides that where the Minister has made the appropriate Regulations there must be compliance with such Regulations.

Section 73(h) substitutes subsection (11) of section 12 of the EAW Act and clarifies that the term “European arrest warrant” includes any document received not only under section 11(1A) but also received separately in accordance with the new subsection (2A) in section 11.

Section 74 (Amendment of section 14 of the Act of 2003)

Section 74(a) substitutes subsection (6) of section 14 of the EAW Act 2003 and addresses the issue of adding “issuing judicial authority or issuing state” on the same basis as has been done in section 12 of the EAW Act.

Section 74(b) substitutes subsection (7) of section 14 of the EAW Act 2003. This is a technical amendment, following from an amendment to section 12 of the EAW Act. It clarifies that faxed copies received under section 12 are also acceptable in cases where the person has been arrested (on grounds of urgency), on foot of a Schengen “alert”.

Section 74(c) amends subsection (10) of section 14 of the EAW Act 2003. The subsection is being re-organised and a revised definition of “Schengen alert” is inserted.

Section 75 (Amendment of section 15 of the Act of 2003)

Section 75(a) substitutes subsections (1) and (2) of section 15 of the EAW Act 2003. These deal with cases where the person consents to being surrendered. This amendment updates the matters about which the High Court is to be satisfied before it makes an order for surrender. In particular, it updates the position in relation to the issues covered by the new section 21A and the revised sections 22, 23 and 24 (see sections 79, 80, 81 and 82 of this Act).

Section 75(b) substitutes subsection (3) of section 15 of the EAW Act 2003 and also concerns cases where the person consents to being surrendered. In such cases, the High Court makes a surrender order but subsection (3) provides that the execution of the surrender order must be delayed for 10 days; however, surrender on a date prior to the end of the 10 day period will now be possible but only where the person requests it and the Court agrees. The amendment introduced by section 75(c) is consequential on the revised subsection (3).

Section 75(d) substitutes subsection (7) of section 15 of the EAW Act 2003. The content of the subsection remains unchanged except for the deletion of the words “Subject to subsection (8)” at the start of subsection (7).

Section 76 (Date of hearing in relation to European arrest warrant)

This section amends section 16 of the EAW Act by substituting subsections (1), (2) and (3), inserting a new subsection (2A), and amending subsection (5)(a) as a consequence of the amendment to subsection (3).

Section 76(a) and (b) substitute subsections (1) and (2) and provides that the High Court may, if satisfied as to certain matters, make an order on such date as is fixed by section 13 or 14 for the hearing of the matter, or on such later date as it considers appropriate, that the person be surrendered. These amendments also update the position in relation to the issues about which the High Court must be satisfied, as covered by the new section 21A and the revised sections 22, 23 and 24 (see sections 79, 80, 81 and 82 of this Act).

Section 76(c) inserts a new subsection (2A) — this is consequential to the amendment of subsections (1) and (2). It clarifies that the High Court may continue to remand a person (whether on bail or in custody) until the surrender hearing is completed.

Section 76(d) substitutes subsection (3). It provides that a surrender order will not take effect until 15 days after its making, but also allows for the possibility of the person asking the court to fix an earlier date for surrender. *Section 76(e)* amends subsection (5)(a) as a consequence of the amendment to subsection (3).

Section 76(f) substitutes subsection (7). It provides that a person who is not surrendered (in line with subsection (5)) must be released from custody at the end of the specified 10 days period unless any proceedings under Article 40.4.2 of the Constitution are pending.

Section 76(g) inserts some textual changes. An updated text of subsection (9) is provided which takes account of the various alterations.

Section 77 (Amendment of section 18 of Act of 2003)

This section inserts a new subsection (2A) in section 18 of the EAW Act.

Section 18 provides for situations where the court (after having made the surrender order) may agree to defer the surrender, for humanitarian or other reasons. Those other reasons may include cases where the person is awaiting trial on a separate charge in Ireland. Normally, a person in respect of whom a surrender order is made is remanded in custody pending surrender. However, if there is a delay in bringing the person to trial it may be inappropriate to hold the person in custody for a prolonged period pending trial. Under subsection (2A) the court is given discretion to remand the person on bail or in custody, pending completion of the Irish proceedings.

Section 78 (Amendment of section 20 of Act of 2003)

This section amends subsections (1) and (2) of section 20 of the EAW Act 2003.

Section 20 provides that the High Court or the Central Authority may request additional information or documentation. It is now being provided that the “issuing judicial authority” or the “issuing state” may supply the additional information.

Section 79 (Refusal to surrender where no decision to prosecute)

This section inserts section 21A in the EAW Act 2003. It deals with the question of ensuring persons are not surrendered for purposes of investigation. It provides that the High Court shall refuse to make a surrender order if it is satisfied that, in the case of a person who has not yet been convicted, a decision has not been made to charge the person with, and try the person for, the offence concerned. Subsection (2) provides a presumption that the issuing state

is presumed to have made a decision to charge the person with, and try him/her for the offence concerned, unless the contrary is proved.

Section 80 (Rule of specialty)

This section substitutes section 22 in the EAW Act 2003 which deals with the rule of specialty (i.e. that rule provides that the person may be proceeded against in the issuing state only for the offences for which he/she was surrendered).

Subsection (1) provides that the specialty rule will not operate so as to prevent the conviction, sentencing and detention in the issuing state of persons surrendered by Ireland in respect of an alternative (but lesser) offence within the same group of offences, i.e. the prohibition on proceedings for other offences — the normal effect of the specialty rule — does not go so far as to prevent a conviction in the issuing state for an alternative but lesser offence, where that offence arises from the same facts or circumstances as gave rise to the charge for which the person was surrendered.

Subsection (2) provides that (upon the matter being raised before it) the High Court shall refuse to make an order for surrender where it is satisfied that the law of the issuing state does not provide for specialty and it has reasonable grounds for believing that the person will be proceeded against etc for offences other than the offence specified in the European arrest warrant.

Subsection (3) contains a presumption that there is compliance by the issuing Member State with the terms of the Framework Decision, in this case that it will respect the provisions on specialty; unless the contrary is proved.

Subsections (4), (5) and (6) contain exceptions to the general rule on specialty, i.e. they indicate circumstances where surrender shall not be refused.

Under subsection (7) it will be necessary to obtain the consent of the High Court where the issuing state proposes to depart from the rule of specialty. Subsection (8) provides that the consent to be given under subsection (7) shall be withheld where surrender would be refused on the grounds in Part 3 of the EAW Act or the Framework Decision.

Section 81 (Surrender of person by issuing state to other Member State)

This section substitutes section 23 in the European Arrest Warrant Act 2003.

Section 23 of the EAW Act deals with the onward surrender of persons by the issuing state to another Member State. The position under this section is that a person must not be surrendered to another Member State without the first executing state consenting to that onward surrender.

Subsection (1) of Section 23 provides a definition of offence in respect of which a person may be subject to onward surrender to another Member State. It provides that an offence for which the person may be surrendered must be an offence that was committed before the person's surrender to the issuing state (pursuant to the original EAW).

Subsection (2) provides that the High Court shall refuse surrender where the law of the issuing state does not provide that a person

surrendered to it shall not be surrendered to another Member State for an offence (as defined in subsection (1)) and it has reasonable grounds for believing that the person will be surrendered to another Member State.

Subsection (3) contains a presumption that the issuing Member State is in compliance with the terms of the Framework Decision in relation to the provisions on onward surrender; unless the contrary is proved.

Subsection (4) sets out the circumstances where surrender shall not be refused. *Subsection (5)* provides that the High Court may consent to onward surrender where the issuing state so requests. *Subsection (6)* provides that the consent to be given under *subsection (5)* shall be withheld where surrender would be refused on the grounds in Part 3 of the EAW Act or the Framework Decision.

Section 82 (Extradition of person by issuing state to third state)

This section substitutes section 24 of the EAW Act. It deals with the extradition of persons by the issuing state to a third, i.e. non-EU state. *Subsection (1)* provides that the High Court shall refuse to order the surrender under the EAW where the law of the issuing state in effect does not require the prior consent of the High Court and the Minister before onward extradition is granted and it has reasonable grounds for believing that the person will be extradited to a third state without such consent being obtained.

Subsection (2) contains a presumption that the issuing Member State is in compliance with the terms of the Framework Decision in respect the provisions on onward extradition. This presumption will apply unless the contrary is proved.

Subsections (3) and (4) are concerned with the giving of consent by the High Court where the issuing state has requested such consent for the onward extradition of the person in question.

Section 83 (Proceedings in the State)

This section substitutes section 42 of the EAW Act.

Section 42 sets out one of the grounds for refusal to surrender a wanted person. It provides that a person shall not be surrendered while the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring a prosecution for an offence or where proceedings have been brought in the State in respect of the offence set out in the EAW.

SCHEDULES

Schedule 1 contains the European Union Council Framework Decision on Combating Terrorism, in Irish and English.

Schedule 2 contains the specified offences for the purpose of definitions of “terrorist activity” and “terrorist-linked activity”.

Schedule 3 contains the text of the International Convention against the Taking of Hostages.

Schedule 4 contains the text of the Convention on the Prevention of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Schedule 5 contains the text of the International Convention for the Suppression of Terrorist Bombings.

Schedule 6 contains the specified offences for the purposes of Offences against Internationally Protected Persons in section 11.

Schedule 7 contains the text of the International Convention for the Suppression of the Financing of Terrorism.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí Márta, 2005.