



STATUTORY INSTRUMENTS.

S.I. No. 381 of 2019



EXTRADITION (CONVENTION ON THE PHYSICAL PROTECTION OF
NUCLEAR MATERIAL) ORDER 2019

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NUCLEAR MATERIAL) ORDER 2019

WHEREAS, by the Convention on the Physical Protection of Nuclear Material (the terms of which are set out in Part A of Schedule 1 to the following Order) adopted at Vienna on 26 October 1979 (referred to subsequently in these recitals as “the Convention”), to which the State is a party, an arrangement was made with the other countries that are parties to that Convention for the surrender of persons wanted for prosecution or punishment for the offences specified therein;

AND WHEREAS the Convention was ratified on behalf of the State on 6 September 1991;

AND WHEREAS the Convention has also been ratified, or acceded to, by the countries specified in that regard in Part B of Schedule 1 to the following Order, subject to the reservations entered and declarations made by certain countries concerned specified in Part C of that Schedule;

AND WHEREAS by the Amendment to the Convention on the Physical Protection of Nuclear Material adopted in Vienna on 8 July 2005 (referred to subsequently in these recitals as “the Amendment” and the terms of which are set out in Part A of Schedule 2 to the following Order), to which the State is a party, an arrangement (within the meaning of subsection (2) of section 8 of the Extradition Act 1965 (No. 17 of 1965)) was made with other countries that are parties to the Amendment;

AND WHEREAS the Amendment was ratified on behalf of the State on 22 September 2014;

AND WHEREAS the Amendment has also been ratified, or acceded to, by the countries specified in that regard in Part B of Schedule 2 to the following Order, subject to the reservations entered and declarations made by certain countries concerned specified in Part C of that Schedule;

NOW I, SIMON COVENEY, Minister for Foreign Affairs and Trade, in exercise of powers conferred on me by section 8 (amended by section 57(3) of the Criminal Justice (Terrorist Offences) Act 2005 (No. 2 of 2005)) of the Extradition Act 1965 (No. 17 of 1965) (as adapted by the Foreign Affairs (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 246 of 2011)), and after consultation with the Minister for Justice and Equality, hereby order as follows:

1. (1) This Order may be cited as the Extradition (Convention on the Physical Protection of Nuclear Material) Order 2019.
- (2) This Order shall come into operation on 22 July 2019.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 2nd August, 2019.*

2. In this Order, “Act of 1965” means the Extradition Act 1965 (No. 17 of 1965).
3. Subject to the reservations and declarations specified in Part C of Schedule 1, Part II of the Act of 1965 shall apply in relation to countries set out in Part B of that Schedule.
4. It is hereby declared that the Government have made an arrangement, within the meaning of section 8(2) of the Act of 1965 (namely, the Amendment to the Convention on Physical Protection of Nuclear Material adopted in Vienna on 8 July 2005), amending, as respects Ireland and the countries specified in Part B of Schedule 2, the Convention on the Physical Protection of Nuclear Material adopted in Vienna on 26 October 1979, subject to the reservations and declarations specified in Part C of that Schedule.

SCHEDULE 1

PART A

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

adopted at Vienna on 26 October 1979

The States Parties to this Convention,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Convinced of the need for facilitating international co-operation in the peaceful application of nuclear energy,

Desiring to avert the potential dangers posed by the unlawful taking and use of nuclear material,

Convinced that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

Aware of the need for international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

Convinced that this Convention should facilitate the safe transfer of nuclear material,

Stressing also the importance of the physical protection of nuclear material in domestic use, storage and transport,

Recognizing the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

Have agreed as follows:

Article 1

For the purposes of this Convention:

- (a) "nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the

mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

- (b) "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (c) "international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

Article 2

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.
2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.
3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

Article 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

Article 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.
3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.
4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.
7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.
2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:
 - (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any

theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;

- (b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
 - (i) co-ordinate their efforts through diplomatic and other agreed channels;
 - (ii) render assistance; if requested;
 - (iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.
2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

Article 7

1. The intentional commission of:
 - (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear

material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

- (b) a theft or robbery of nuclear material;
- (c) an embezzlement or fraudulent obtaining of nuclear material;
- (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (e) a threat:
 - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or
 - (ii) to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and
- (g) an act which constitutes participation in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases;
 - (a) when the offence 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.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is presented in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

Article 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

Article 10

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 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences 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 at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. State Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences 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 Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

Article 12

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.
3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

Article 15

The Annexes constitute an integral part of this Convention.

Article 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.
2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. Each State Party 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 either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.
4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

Article 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.

4.
 - (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.
 - (b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.
 - (c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.
 - (d) Such an organization shall not hold any vote additional to those of its Member States.
5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-first instrument of ratification, acceptance or approval with the depositary.
2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty-first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to be held not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.
2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the

thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 21

1. Any State Party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

Article 22

The depositary shall promptly notify all States of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any reservation or withdrawal in accordance with article 17;
- (d) any communication made by an organization in accordance with paragraph 4(c) of article 18;
- (e) the entry into force of this Convention;
- (f) the entry into force of any amendment to this Convention; and
- (g) any denunciation made under article 21.

Article 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

ANNEX I
LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN
INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS
CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
 - (a) For Category III materials, storage within an area to which access is controlled.
 - (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection.
 - (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:
 - (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
 - (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;
 - (c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

ANNEX II
TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III ^c
1. Plutonium ^a	Unirradiated ^b	2 kg or more	Less than 2 kg but more than 500g	500g or less but more than 15g
2. Uranium-235	Unirradiated ^b — uranium enriched to 20% ²³⁵ U or more	5kg or more	Less than 5 kg but more than 1kg	1kg or less but more than 15g
	— uranium enriched to 10% ²³⁵ U but less than 20%		10 kg or more	Less than 10kg but more than 1kg
	— uranium enriched above natural, but less than 10% ²³⁵ U			10kg or more
3. Uranium-233	Unirradiated ^b	2 kg or more	Less than 2kg but more than 500g	500g or less but more than 15g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) ^{d e}	

- a. All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.
- b. Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.
- c. Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.
- d. Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.
- e. Other fuel which by virtue of its original fissile material content is classified as Category I and [Category] II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

PART B

Afghanistan	Iceland
Albania	India
Algeria	Indonesia
Andorra	Iraq
Antigua and Barbuda	Israel
Argentina	Jamaica
Armenia	Japan
Australia	Jordan
Azerbaijan	Kazakhstan
Bahamas	Kenya
Bahrain	Kuwait
Bangladesh	Kyrgyzstan
Belarus	Lao People's Democratic Republic
Bolivia (Plurinational State of)	Lebanon
Bosnia and Herzegovina	Lesotho
Botswana	Libya
Brazil	Liechtenstein
Burkina Faso	Madagascar
Cabo Verde	Malawi
Cambodia	Mali
Cameroon	Marshall Islands
Canada	Mauritania
Central African Republic	Mexico
Chile	Monaco
China	Mongolia
Colombia	Montenegro
Comoros	Morocco
Costa Rica	Mozambique
Côte d'Ivoire	Myanmar
Cuba	Namibia
Democratic Republic of the Congo	Nauru
Djibouti	New Zealand
Dominica	Nicaragua
Dominican Republic	Niger
Ecuador	Nigeria
El Salvador	Niue
Equatorial Guinea	Norway
Eswatini	Oman
Fiji	Pakistan
Gabon	Palau
Georgia	Palestine
Ghana	Panama
Grenada	Paraguay
Guatemala	Peru
Guinea	Philippines
Guinea-Bissau	Qatar
Guyana	Republic of Korea
Honduras	Republic of Moldova

Republic of North Macedonia
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
San Marino
Saudi Arabia
Senegal
Serbia
Seychelles
Singapore
South Africa
Sudan
Switzerland
Tajikistan
Thailand

Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Republic of Tanzania
United States of America
Uruguay
Uzbekistan
Viet Nam
Yemen
Zambia

PART C

**Reservations and Declarations made by States Parties with respect to the
Convention on the Physical Protection of Nuclear Material**

**(Unless otherwise indicated, the declarations and reservations were made
upon ratification, acceptance, approval, formal confirmation, succession
or accession.)**

El Salvador

"With regard to the provisions of Article 11 of the Convention, the Government of the Republic of El Salvador does not consider the Convention as the legal basis for cooperation in respect of extradition.

[...]"

Lao People's Democratic Republic

"[...]

[In relation to Article 11(2) of the Convention...] The Lao People's Democratic Republic declares that it makes extradition conditional on the existence of a treaty. Nevertheless, it does not consider the Convention on the Physical Protection of Nuclear Material as the legal basis for extradition in respect of the offences set forth therein. It further declares that bilateral agreements will be the basis for extradition as between the Lao People's Democratic Republic and other States Parties in respect of any offences.

[...]"

Viet Nam:

"[...]

the Socialist Republic of Viet Nam, pursuant to Article 11 of this Convention, declares that it shall not take this Convention as the direct legal basis for extradition. The Socialist Republic of Viet Nam shall carry out extradition in accordance with the provisions of the Vietnamese law, on the basis of treaties on extradition and the principle of reciprocity."

SCHEDULE 2

PART A

**AMENDMENT TO THE CONVENTION ON THE PHYSICAL
PROTECTION OF NUCLEAR MATERIAL**

adopted at Vienna on 8 July 2005

1. The Title of the Convention on the Physical Protection of Nuclear Material adopted on 26 October 1979 (hereinafter referred to as “the Convention”) is replaced by the following title:

**CONVENTION ON THE PHYSICAL PROTECTION OF
NUCLEAR MATERIAL AND NUCLEAR FACILITIES**

2. The Preamble of the Convention is replaced by the following text:

The States Parties to this Convention,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Convinced of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,

Bearing in mind that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,

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 co-operation among States,

Considering that under the terms of paragraph 4 of Article 2 of the Charter of the United Nations, “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,”

Recalling the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

Desiring to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,

Deeply concerned by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime,

Believing that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,

Desiring through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,

Convinced that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures, or to strengthen existing measures, to ensure the prevention, detection and punishment of such offences,

Desiring to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,

Convinced that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,

Recognizing that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

Recognizing also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

Have agreed as follows:

3. In Article 1 of the Convention, after paragraph (c), two new paragraphs are added as follows:

- (d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;
- (e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.

- 4. After Article 1 of the Convention, a new Article 1A is added as follows:

Article 1A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

- 5. Article 2 of the Convention is replaced by the following text:
 - 1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international nuclear transport.
 - 2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.
 - 3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.
 - 4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

- (b) 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 the 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.
 - (c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.
 - (d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.
5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.
6. After Article 2 of the Convention, a new Article 2A is added as follows:

Article 2A

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:
 - (a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport;
 - (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5;
 - (c) protecting nuclear material and nuclear facilities against sabotage; and
 - (d) mitigating or minimizing the radiological consequences of sabotage.
2. In implementing paragraph 1, each State Party shall:

- (a) establish and maintain a legislative and regulatory framework to govern physical protection;
 - (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and
 - (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.
3. In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

FUNDAMENTAL PRINCIPLE A: *Responsibility of the State*

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport*

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework*

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

FUNDAMENTAL PRINCIPLE D: *Competent Authority*

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to

fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders*

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers).

FUNDAMENTAL PRINCIPLE F: *Security Culture*

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

FUNDAMENTAL PRINCIPLE G: *Threat*

The State's physical protection should be based on the State's current evaluation of the threat.

FUNDAMENTAL PRINCIPLE H: *Graded Approach*

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities.

FUNDAMENTAL PRINCIPLE I: *Defence in Depth*

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

FUNDAMENTAL PRINCIPLE J: *Quality Assurance*

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

FUNDAMENTAL PRINCIPLE K: *Contingency Plans*

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities

or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

FUNDAMENTAL PRINCIPLE L: *Confidentiality*

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.
 - (b) Nuclear material which is not subject to the provisions of this article pursuant to sub-paragraph (a) should be protected in accordance with prudent management practice.
7. Article 5 of the Convention is replaced by the following text:
1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.
 2. In the case of theft, robbery or any other unlawful taking of nuclear material or credible threat thereof, States Parties shall, in accordance with their national law, provide cooperation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:
 - (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations;
 - (b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the

International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container or recovering unlawfully taken nuclear material and shall:

- (i) co-ordinate their efforts through diplomatic and other agreed channels;
- (ii) render assistance, if requested;
- (iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:
 - (a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage;
 - (b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof;
 - (c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered;

- (d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multilaterally by the States Parties concerned.
 4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.
 5. A State Party may consult and co-operate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.
8. Article 6 of the Convention is replaced by the following text:
 1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.
 2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.
9. Paragraph 1 of Article 7 of the Convention is replaced by the following text:
 1. The intentional commission of:
 - (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or

- dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment;
- (b) a theft or robbery of nuclear material;
 - (c) an embezzlement or fraudulent obtaining of nuclear material;
 - (d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;
 - (e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;
 - (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
 - (g) a threat:
 - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in sub-paragraph (e), or
 - (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
 - (h) an attempt to commit any offence described in subparagraphs (a) to (e);
 - (i) an act which constitutes participation in any offence described in subparagraphs (a) to (h);
 - (j) an act of any person who organizes or directs others to commit an offence described in subparagraphs (a) to (h); and
 - (k) an act which contributes to the commission of any offence described in subparagraphs (a) to (h) by a group of persons acting with a common purpose; such act 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 described in sub-paragraphs (a) to (g), or

- (ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g)

shall be made a punishable offence by each State Party under its national law.

10. After Article 11 of the Convention, two new articles, Article 11A and Article 11B, are added as follows:

Article 11A

None of the offences set forth in article 7 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 11B

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 7 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.

11. After Article 13 of the Convention, a new Article 13A is added as follows:

Article 13A

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

12. Paragraph 3 of Article 14 of the Convention is replaced by the following text:

3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

13. Article 16 of the Convention is replaced by the following text:

3. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
4. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

14. Footnote ^{b/} of Annex II of the Convention is replaced by the following text:

^{b/} Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 gray/hour (100 rads/hour) at one metre unshielded.

15. Footnote ^{e/} of Annex II of the Convention is replaced by the following text:

^{e/} Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 gray/hour (100 rads/hour) at one metre unshielded.

PART B

Albania	Libya
Algeria	Liechtenstein
Antigua and Barbuda	Madagascar
Argentina	Mali
Armenia	Marshall Islands
Australia	Mauritania
Azerbaijan	Mexico
Bahrain	Monaco
Bangladesh	Montenegro
Bolivia (Plurinational State of)	Morocco
Bosnia and Herzegovina	Myanmar
Botswana	Namibia
Burkina Faso	Nauru
Cameroon	New Zealand
Canada	Nicaragua
Chile	Niger
China	Nigeria
Colombia	Norway
Costa Rica	Pakistan
Côte d'Ivoire	Palestine
Cuba	Panama
Djibouti	Paraguay
Dominican Republic	Peru
Ecuador	Qatar
El Salvador	Republic of Korea
Eswatini	Republic of Moldova
Fiji	Republic of North Macedonia
Gabon	Russian Federation
Georgia	Saint Lucia
Ghana	San Marino
Iceland	Saudi Arabia
India	Senegal
Indonesia	Serbia
Israel	Seychelles
Jamaica	Singapore
Japan	Switzerland
Jordan	Tajikistan
Kazakhstan	Thailand
Kenya	Tunisia
Kuwait	Turkey
Kyrgyzstan	Turkmenistan
Lesotho	Ukraine

United Arab Emirates
United States of America
Uruguay

Uzbekistan
Viet Nam

PART C

Reservations made by States Parties with respect to the Amendment to the Convention on the Physical Protection of Nuclear Material

**(Unless otherwise indicated, the reservations were made upon ratification,
acceptance, approval, formal confirmation, succession or accession.)**

Azerbaijan

"[...]

2. The Republic of Azerbaijan declares that it is unable to guarantee the implementation of the provisions of the Convention on the Physical Protection of Nuclear Material and the Amendment to the Convention on the Physical Protection of Nuclear Material in its territories occupied by the Republic of Armenia (the Nagorno-Karabakh region of the Republic of Azerbaijan and its seven districts surrounding that region), until the liberation of those territories from the occupation and complete elimination of the consequences of that occupation (the schematic map of the occupied territories of the Republic of Azerbaijan is enclosed).

3. The Republic of Azerbaijan reserves the right to amend or revoke at any time the provisions of Paragraph 1 and Paragraph 2 of the present Declaration, and other Parties shall be notified in writing of any such amendments or revocation."

Pakistan

"[...]

(6) It does not consider Article 11 of the Convention to be the legal basis for extradition, with respect of the offences set forth therein, and it shall conduct all extraditions under the Convention in accordance with the provisions of the laws of the Islamic Republic of Pakistan, on the basis of treaties on extradition the Government of the Islamic Republic of Pakistan has entered into, and upon the principle of reciprocity."



GIVEN under my Official Seal,
18 July, 2019.

SIMON COVENEY,
Minister for Foreign Affairs and Trade.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this Order is to apply the provisions of Part II of the Extradition Act 1965 to the countries listed in Part B of Schedule 1 to the Order in respect of offences under the 1979 Convention on the Physical Protection of Nuclear Material. The Convention was ratified on behalf of the State on 6 September 1991. The countries listed in Part B of Schedule 1 are those states parties to the Convention other than Member States of the European Union because extradition to and from those Member States is regulated by the European Arrest Warrant system.

This Order also contains a declaration under section 8(2) of the Extradition Act 1965 to the effect that the Government have made an arrangement (namely, the Amendment to the Convention on the Physical Protection of Nuclear Material adopted at Vienna on 8 July 2005), amending the Convention as between Ireland and the countries listed in Part B of Schedule 2.

Part C of Schedule 1 and Part C of Schedule 2 list the reservations and declarations, or parts thereof, made by certain countries which relate to extradition under the Convention, as amended.

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