

Amendment History

Subsections (6) and (7) substituted, and subs.(10) amended by s.74 of the Criminal Justice (Terrorist Offences) Act 2005, No. 2 of 2005, which came into effect on March 8, 2005.

I-1515

Section 15.

Consent to surrender

[(1) Where a person is brought before the High Court under s.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 s.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 s.21A, 22, 23 or 24 (inserted by ss.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 s.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 s.21A, 22, 23 or 24 (inserted by ss.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.]

(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.]

(4) Where the High Court makes an order under this section, it shall—

(a) inform the person to whom the order relates of his or her right to make a complaint under Article 40.4.2° of the Constitution at any time before his or her surrender to the issuing state,

(b) record in writing that the person concerned has consented to his or her being surrendered to the issuing state concerned, and

(c) commit the person to a prison (or, if the person is not more than 21 years of age, to a remand institution) pending the carrying out of the terms of the order.

(5) Subject to subsection (6) and section 18, a person to whom an order for the time being in force under this section applies shall be surrendered to the issuing state concerned not later than 10 days after—

[(a) the order takes effect in accordance with subs.(3) (inserted by s.75(b) of the Criminal Justice (Terrorist Offences) Act 2005), or]

(b) such date (being a date that falls after the expiration of that period) as may be agreed by the Central Authority in the State and the issuing state.

(6) Where a person makes a complaint under Article 40.4.2° of the Constitution, he or she shall

not be surrendered to the issuing state while proceedings relating to the complaint are pending.

I-1515C

[(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 *subs.(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 *subs.(6)* are pending.]

(8) *Subsection (7)* 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 from custody under *subsection (7)*, all or part of that 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)*, 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.

(9) A person who has consented under this *section* to his or her being surrendered may, at any time thereafter but before his or her surrender in accordance with an order under this *section*, withdraw his or her consent and, where he or she withdraws his or her consent—

(a) the order made by the High Court under this *section* shall stand annulled, and

(b) the period between the giving of such consent before the High Court and the withdrawal by him or her of such consent shall not be taken into account for the purposes of calculating the periods specified in *subsections (10) and (11) of section 16*.

Subsections (1), (2), (3), (5)(a) and (7) substituted by s.75 of the Criminal Justice (Terrorist Offences) Act 2005, No. 2 of 2005, which came into effect on March 8, 2005.

I-1516

Section 16.

Committal of person named in European arrest warrant

[(1) Where a person does not consent to his or her surrender to the issuing state or has withdrawn his or her consent under s.15(9) the High Court may, upon such date as is fixed under s.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 s.13 for execution of the warrant,

(c) where appropriate, an undertaking under s.45 or a facsimile or true copy thereof is provided to the court,

(d) the High Court is not required, under s.21A, 22, 23 or 24 (inserted by ss.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).]

(2) Where a person does not consent to his or her surrender to the issuing state or has withdrawn his or her consent under s.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 s.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 s.21A, 22, 23 or 24 (inserted by ss.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).]

(2A) Where the High Court does not—

(a) make an order under *subs.(1)* on the date fixed under s.13 , or

(b) make an order under *subs.(2)* on the date fixed under s.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.]

(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.]

(4) When making an order under this *section* the High Court shall also make an order committing the person to a prison (or if he or she is not more than 21 years of age, to a remand institution) there to remain pending his or her surrender in accordance with the order under this *section* , and shall inform the person—

(a) that he or she will not, without his or her consent, be surrendered to the issuing state, before the expiration of the period of 15 days specified in *subsection (3)* , and

(b) of his or her right to make a complaint under *Article 40.4.2° of the Constitution* at any time before his or her surrender to the issuing state.

(5) Subject to *subsection (6)* and *section 18* , a person to whom an order for the time being in force under this *section* applies shall be surrendered to the issuing state not later than 10 days after—

[(a) the order takes effect in accordance with *subs.(3)* (inserted by s.76(d) of the *Criminal Justice (Terrorist Offences) Act 2005*), or]

(b) such date (being a date that falls after the expiration of that period) as may be agreed by the Central Authority in the State and the issuing state.

(6) Where a person makes a complaint under *Article 40.4.2° of the Constitution* , he or she shall not be surrendered to the issuing state while proceedings relating to the complaint are pending.

I-1516A

[(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.]

(8) Where the High Court decides not to make an order under this *section* —

(a) it shall give reasons for its decision, and

(b) the person shall, subject to *subsection (9)*, be released from custody.

(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 [*subsections (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 [*subsections (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.

(10) If the High Court has not, after the expiration of 60 days from the arrest of the person concerned under *section 13 or 14*, made an order under this *section or section 15*, or has decided not to make an order under this *section*, it shall direct the Central Authority in the State to inform the issuing judicial authority and, where appropriate, Eurojust in relation thereto and of the reasons therefor specified in the direction, and the Central Authority in the State shall comply with such direction.

(11) If the High Court has not, after the expiration of 90 days from the arrest of the person concerned under *section 13 or 14*, made an order under this *section or section 15*, or has decided not to make an order under this *section*, it shall direct the Central Authority in the State

to inform the issuing judicial authority and, where appropriate, Eurojust in relation thereto and of the reasons therefor specified in the direction, and the Central Authority in the State shall comply with such direction.

(12) An appeal against an order under this *section* or a decision not to make such an order may be brought in the Supreme Court on a point of law only.

Amendment History

Subsections (1), (2), (3), (5)(a) and (7) substituted, subs.(2A) inserted and subs.(9) amended by s.76 of the Criminal Justice (Terrorist Offences) Act 2005, No. 2 of 2005, which came into effect on March 8, 2005.

I-1517

Section 17.

European arrest warrant relating to more than one offence

Where, in relation to an offence specified in a European arrest warrant, the High Court decides not to make an order under *section 15 or 16*, it shall not be necessary for the issuing judicial authority to issue another European arrest warrant in respect of such other offences as are specified in that warrant, and, where such other offences are specified in the European arrest warrant, that warrant shall be treated as having been issued in respect of those other offences only.

I-1518

Section 18.

Postponement of surrender

(1) The High Court may, if satisfied that circumstances exist that would warrant the postponement, on humanitarian grounds, of the surrender to the issuing state of a person to whom an order under *section 15 or 16* applies, direct that the person's surrender be postponed until such date as the High Court states that, in its opinion, those circumstances no longer exist.

(2) Without prejudice to the generality of *subsection (1)*, circumstances to which that *paragraph* applies include a manifest danger to the life or health of the person concerned likely to be occasioned by his or her surrender to the issuing state in accordance with *section 15(5) or 16(5)*

[(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.]

(3) Subject to *section 19*, where a person to whom an order under *section 15 or 16* applies—

(a) is being proceeded against for an offence in the State, or

(b)

(i) has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State, and

be so removed, and the person shall, while detained in a hospital or other place pursuant to a direction under this subsection be deemed to be in lawful custody.

(2) Sections 10 and 11 of the Criminal Justice Act 1960 shall apply to a person who is not less than 16, nor more than 21, years of age remanded in custody under this Act or committed to a prison or remand institution under section 15 or 16, subject to the following modifications:

(a) in section 10(1), the reference to "a person detained under section 9 of this Act or this section" shall be construed as a reference to "a person remanded in custody or committed to a prison or remand institution under the European Arrest Warrant Act 2003";

(b) in section 11(1), the reference to "a person who is detained in a remand institution pursuant to section 9 of this Act" shall be construed as a reference to "a person remanded in custody or committed to a prison or remand institution under the European Arrest Warrant Act 2003"; and

(c) in section 11(3), the reference to "section 9" shall be construed as a reference to "the European Arrest Warrant Act 2003".

I-1521A

Section 21A.

[Refusal of surrender where no decision to prosecute

(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.]

Amendment History

Section 21A inserted by s.79 of the Criminal Justice (Terrorist Offences) Act 2005, No. 2 of 2005, which came into effect on March 8, 2005.

I-1522

Section 22.

[Rule of specialty

(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 subs. (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 subs.(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 subs.(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 *subs.(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 s.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 subs.(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.]

Amendment History

Section 22 substituted by s.80 of the *Criminal Justice (Terrorist Offences) Act 2005*, No. 2 of 2005, which came into effect on March 8, 2005.

I-1523

Section [23.

Surrender of person by issuing state to other Member State

(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—

(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 subs.(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.]

Amendment History

Section 23 substituted by s.81 of the Criminal Justice (Terrorist Offences) Act 2005, No. 2 of 2005, which came into effect on March 8, 2005.

I-1524A

Section [24.

[Extradition of person by issuing state to third state

(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* .]

Amendment History

Section 23 substituted by s.82 of the Criminal Justice (Terrorist Offences) Act 2005 , No. 2 of 2005, which came into effect on March 8, 2005.

I-1525

Section 25.

Searches for purposes of European arrest warrant

(1) A member of the Garda Síochána, may, for the purposes of performing functions under *section 13 or 14* , enter any place (if necessary by the use of reasonable force) and search that place, if he or she has reasonable grounds for believing that a person in respect of whom a European arrest warrant has been issued is to be found at that place.

(2) Where a member of the Garda Síochána enters a place under *subsection (1)* , he or she may search that place and any person found at that place, and may seize anything found at that place or anything found in the possession of a person present at that place at the time of the search that the said member believes to be evidence of, or relating to, an offence specified in a European arrest warrant, or to be property obtained or received at any time (whether before or after the passing of this Act) as a result of or in connection with the commission of that offence.

(3) Subject to *subsection (4)* , a member of the Garda Síochána, who has reasonable grounds for believing that evidence of, or relating to, an offence specified in a European arrest warrant, or property obtained or received at any time (whether before or after the passing of this Act) as a result of, or in connection with, the commission of that offence is to be found at any place, may enter that place (if necessary by the use of reasonable force) and search that place and any person found at that place, and may seize anything found at that place or anything found in the possession of a person present at that place at the time of the search that the member believes to be such evidence or property.

(4) (a) A member of the Garda Síochána shall not enter a dwelling under *subsection (3)* , other than—