

No. 15/1994: CRIMINAL JUSTICE ACT, 1994

PART VII INTERNATIONAL CO-OPERATION

External confiscation orders, etc.

46. —(1) The Government may by order designate countries as countries in whose case orders (referred to in this section as "confiscation co-operation orders") may be made for the confiscation, in accordance with the law of the State, of property which is liable to confiscation in accordance with orders (referred to in this section as "external confiscation orders") made by a court in the country in question for the purpose—

(*a*) of recovering payments or other rewards received as a result of or in connection with drug trafficking or their value, or

(*b*) of recovering—

(i) property obtained as a result of or in connection with conduct corresponding to an offence in respect of which a confiscation order could be made under *section 9* of this Act, or

(ii) the value of property so obtained,

or

(*c*) of depriving a person of a pecuniary advantage obtained as mentioned in *paragraph (b)* of this subsection.

(2) If an application is made to the High Court by or on behalf of the government of a country designated under *subsection (1)* of this section (referred to in this section as a "designated country") and with the consent of the Minister for the making of a confiscation co-operation order pursuant to an external confiscation order made by a court in that country, and the High Court is satisfied that the conditions specified in *subsection (3)* of this section are satisfied, the court may make a confiscation co-operation order.

(3) The conditions referred to in *subsection (2)* of this section are that the High Court should—

(*a*) be satisfied that at the time of the making of the order the external confiscation order is in force and not subject to appeal,

(*b*) be satisfied, where the person against whom that order was made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them, and

(c) be of the opinion that the making of a confiscation co-operation order corresponding to the external confiscation order would not be contrary to the interests of justice.

(4) In *subsection (3)* of this section "appeal" includes—

(a) any proceedings by way of discharging or setting aside a judgment, and

(b) an application for a new trial or a stay of execution.

(5) A confiscation co-operation order shall have the like effect as a confiscation order made under *section 4* or *9* of this Act save that—

(a) if the external confiscation order was for the confiscation of specified property (other than money), the confiscation co-operation order shall be an order for the recovery of that property (or of so much of the property as is specified in the application), and

(b) if the external confiscation order was for the recovery of a sum of money, the confiscation co-operation order shall be for the recovery of that sum (or, if a lesser sum is specified in the application, then for the recovery of the lesser sum).

(6) The Government may by regulations make such modifications of this Act as appear to it to be necessary or expedient for the purpose of adapting to confiscation co-operation orders any of the provisions of this Act relating to confiscation orders, in particular in relation to enforcement and the taking of provisional measures to prevent any dealing in, or transfer or disposal of, property that may be liable to confiscation in accordance with any confiscation co-operation order that may be made.

(7) The High Court shall revoke the confiscation co-operation order if it appears to the court that the external confiscation order has been satisfied in accordance with the law of the country in which it was made.

(8) Where it is proposed to make regulations under *subsection (6)* of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such House.

(9) The Government may amend or revoke an order made under this section including an order made under this subsection.

(10) An order under *subsection (1)* or *(9)* of this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

External forfeiture
orders, etc.

47.—(1) The Government may by order designate countries in whose case orders (referred to in this section as "forfeiture co-operation orders") may be made for the forfeiture, in accordance with the law of the State, of anything—

(a) in respect of which an offence to which this section applies

has been committed or which was used or intended to be used in connection with the commission of such an offence, and

(*b*) in respect of which an order (referred to in this section as an "external forfeiture order") has been made by a court in the country in question.

(2) Subject to *subsection (3)* of this section, if an application is made to the High Court by or on behalf of the government of a country designated under *subsection (1)* of this section (referred to in this section as a "designated country") and with the consent of the Minister for the making of a forfeiture co-operation order pursuant to an external forfeiture order made by a court in that country, and the High Court is satisfied that the conditions corresponding to those specified in *subsections (3) and (4)* of *section 46* of this Act are satisfied, the court may make a forfeiture co-operation order.

(3) The court shall not make an order under *subsection (2)* of this section if a person claiming to be the owner of the thing in question or otherwise interested in it applies to be heard by the court unless an opportunity has been given to him to show cause why the order should not be made.

(4) A forfeiture co-operation order shall have the like effect as a forfeiture order made under *section 61* of this Act as specified in *subsection (4)* of that section, and *subsections (7) and (8)* of that section shall apply accordingly.

(5) This section applies to any offence which corresponds to—

(*a*) an offence under the [Misuse of Drugs Act, 1977](#) ,

(*b*) a drug trafficking offence, or

(*c*) an offence in respect of which a confiscation order could be made under *section 9* of this Act.

(6) The Government may amend or revoke an order made under this section including an order made under this subsection.

(7) An order under *subsection (1)* or *(6)* of this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

Proof of external order, etc.

48. —(1) On the hearing of an application to the High Court under *section 46* of this Act for the making of a confiscation co-operation order, or under *section 47* of this Act for the making of a forfeiture co-operation order, a certificate signed by, or with the authority of, a judge of the court which made the external confiscation order or the external forfeiture order in question and recording the making of the order or the giving of any evidence or information in the proceedings leading to the making of the order, shall be admissible as evidence of the making of the order or of any fact contained in the evidence or information without further proof.

(2) A document purporting to be a certificate under *subsection (1)* of this section shall be deemed to be such a certificate, and to have been signed by the person purporting to have signed it (and, in the case of such a document purporting to have been signed with the authority of a judge of the court, to

have been signed in accordance with the authorisation), unless the contrary is shown.

(3) Where a document is admissible in evidence under this section, any document which purports to be a translation of that document shall be admissible as evidence of the translation if it is certified as correct by a person competent to do so; and a document purporting to be a certificate under this subsection shall be deemed to be such a certificate, and to be signed by the person purporting to have signed it, unless the contrary is shown.

Service in State of
process issued outside
State.

49.—(1) This section shall have effect where the Minister receives from the government of, or other authority in, a country or territory outside the State—

(a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory, or

(b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in the State.

(2) The Minister may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of the Garda Síochána to cause it to be served personally on him.

(3) Service by virtue of this section of any process such as is mentioned in *subsection (1) (a)* of this section shall not impose any obligation under the law of the State to comply with it.

(4) The Minister shall not cause a summons or other process requiring a person to appear as defendant in criminal proceedings in another country or territory to be served under *subsection (1) (a)* of this section unless provision is made by the law of that country or territory or by arrangement with the appropriate authority thereof that, if the person concerned appears as defendant in compliance with the summons or process, he will not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in that country or territory in respect of any offences committed before his departure from the State other than the offences specified in the summons or process unless that person—

(a) having had for a period of 15 consecutive days from the date of his final discharge in respect of the offences specified in the summons or process an opportunity to leave the country or territory concerned, has not done so, or

(b) having left that country or territory, has returned to it.

(5) The Minister shall not cause a summons or other process requiring a person to attend as a witness in criminal proceedings in another country or territory to be served under *subsection (1) (a)* of this section unless

provision is made by the law of that country or territory or by arrangement with the appropriate authority thereof that, if the person concerned attends as a witness in compliance with the summons or process, he will not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in that country or territory in respect of any offences committed before his departure from the State unless that person—

(*a*) having had for a period of 15 consecutive days from the date when his presence is no longer required as a witness in the proceedings concerned an opportunity to leave the country or territory concerned, has not done so, or

(*b*) having left that country or territory, has returned to it.

(6) Any such process served by virtue of this section shall be accompanied by a notice—

(*a*) stating the effect of *subsections (3), (4) and (5)* of this section,

(*b*) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued, and

(*c*) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in the State.

(7) Where the Commissioner of the Garda Síochána is directed under this section to cause any summons, process or document to be served, he shall, after it has been served, forthwith inform the Minister when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the Commissioner of the Garda Síochána has been unable to cause the summons, process or document to be served, he shall forthwith inform the Minister of that fact and of the reason.

Service outside State
of process issued in
State.

50. —(1) Process of the following descriptions, that is to say—

(*a*) a summons requiring a person charged with an offence to appear before a court in the State, and

(*b*) a summons or order requiring a person to attend before a court in the State for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person in question is outside the State and may be served outside the State in accordance with arrangements made by the Minister for Foreign Affairs.

(2) Service of any process outside the State by virtue of this section shall not

impose any obligation under the law of the State to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question.

(3) *Subsection (2)* of this section shall operate without prejudice to the service of any process on the person in question if subsequently effected in the State.

(4) Where a person is in the State in compliance with a summons such as is referred to in *subsection (1) (a)* of this section which has been served on him by virtue of this section, that person shall not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in the State in respect of any offences committed before his arrival in the State other than the offences specified in the summons unless that person—

(a) having had for a period of 15 consecutive days from the date of his final discharge in respect of the offences specified in the summons an opportunity to leave the State, has not done so, or

(b) having left the State, has returned to it.

(5) Where a person is in the State in compliance with a summons such as is referred to in *subsection (1) (b)* of this section which has been served on him by virtue of this section, that person shall not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in the State in respect of any offences committed before his arrival in the State unless that person—

(a) having had for a period of 15 consecutive days from the date when his presence is no longer required as a witness in the proceedings concerned an opportunity to leave the State, has not done so, or

(b) having left the State, has returned to it.

Taking of evidence in State for use outside State.

51.—(1) This section shall have effect where the Minister receives—

(a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the State or a prosecuting authority in such a country or territory, or

(b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in the State in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) If the Minister is satisfied—

(a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and

(b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, by a notice in writing nominate a judge of the District Court to receive such of the evidence to which the request relates as may appear to the judge to be appropriate for the purpose of giving effect to the request.

(3) For the purpose of satisfying himself as to the matters mentioned in *subsection (2) (a)* and *(b)* of this section the Minister may regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(4) In this section "evidence" includes documents and other articles.

(5) The Minister shall not exercise the power conferred on him by *subsection (2)* of this section unless provision is made by the law of the country or territory or by arrangement with the appropriate authority thereof that any evidence that may be furnished in response to the request will not, without his consent, be used for any purpose other than that specified in the request.

(6) The *Second Schedule* to this Act shall have effect with respect to the proceedings before the nominated judge in pursuance of a notice under *subsection (2)* of this section.

(7) The following enactments are hereby repealed, that is to say—

(a) section 24 of the Extradition Act, 1870,

(b) section 5 of the Extradition Act, 1873,

(c) sections 3 (1) (b) and (2) (c) and 4 (1) (b) of the [Extradition \(European Convention on the Suppression of Terrorism\) Act, 1987](#) , and

(d) section 1 (3) (c) of the [Extradition \(Amendment\) Act, 1994](#) .

(8) [Section 3](#) of the [Genocide Act, 1973](#) , is hereby amended by the substitution therefor of the following section:

"Extradition and evidence for foreign courts.

3.—(1) No offence which, if committed in the State, would be punishable as genocide or as an attempt, conspiracy or incitement to commit genocide shall be regarded as a political offence or

an offence connected with a political offence for the purposes of the Extradition Act, 1965.

(2) A person shall not be exempt from extradition under the Extradition Act, 1965, for an offence referred to in subsection (1) of this section on the ground that, under the law in force at the time when, and in the place where, he is alleged to have committed the act of which he is accused or of which he was convicted, he could not have been punished therefor."

(9) Notwithstanding *subsections (7) and (8)* of this section, if before the coming into operation of this section any steps have been taken with a view to the taking of evidence under any of the enactments mentioned in those subsections or the taking of such evidence has begun, the taking of the evidence may be begun or continued as if those subsections had not been enacted.

Obtaining of evidence outside State for use in State.

52.—(1) Where on an application made in accordance with *subsection (2)* of this section it appears to a judge of any court—

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter ("a letter of request") requesting assistance in obtaining outside the State such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under *subsection (1)* of this section may be made by the Director of Public Prosecutions or, if proceedings have been instituted, by a person charged in those proceedings.

(3) Subject to *subsection (4)* of this section, a letter of request shall be sent to the Minister for transmission either—

(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained, or

(b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(4) In cases of urgency a letter of request may be sent direct to such a court or tribunal as is mentioned in *subsection (3) (a)* of this section.

(5) In this section "evidence" includes documents and other articles.

(6) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in *subsection (3) (b)* of this section be used for any purpose other than specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(7) A statement of evidence of a witness taken in compliance with a letter of request, and certified by or on behalf of the court, tribunal or authority by which it was taken to be a true and accurate statement of the evidence so taken shall be admissible in the proceedings concerned as evidence of any fact stated therein of which evidence would be admissible in those proceedings.

(8) A document purporting to be a certificate of a court, tribunal or authority under *subsection (7)* of this section and to be signed by or on behalf of the court, tribunal or authority shall be deemed, for the purposes of this section, to be such a certificate and to be so signed unless the contrary is shown.

(9) Where a document is admissible in evidence under this section, any document which purports to be a translation of that document shall be admissible as evidence of the translation if it is certified as correct by a person competent to do so; and a document purporting to be a certificate under this subsection shall be deemed to be such a certificate, and to be signed by the person purporting to have signed it, unless the contrary is shown.

(10) In considering whether a statement contained in evidence taken pursuant to a letter of request should be excluded in the exercise of the court's discretion to exclude evidence otherwise admissible the court shall have regard—

(a) to whether it was possible to challenge the statement by questioning the person who made it, and

(b) if the statement was taken in proceedings in the country or territory in question, to whether the law of that country or territory allowed the parties to the proceedings to be legally represented when the evidence was being taken.

Transfer of prisoner in State to give evidence or assist investigation outside State.

53. —(1) The Minister may, if he thinks fit, issue a warrant providing for any person (referred to in this section as "a prisoner") serving a sentence in a prison or any other place for which rules or regulations may be made under the Prisons Acts, 1826 to 1980, or [section 13](#) of the [Criminal Justice Act, 1960](#) , to be transferred to a country or territory outside the State for the purpose—

(a) of giving evidence in criminal proceedings there, or

(b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in *subsection (1)* of this section and that consent may be given either—

(a) by the prisoner himself, or

(b) in circumstances in which it appears to the Minister inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Minister to be an appropriate person to act on his behalf.

(3) The effect of a warrant under this section shall be to authorise—

(a) the taking of the prisoner to a place in the State and his delivery at a place of departure from the State into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred, and

(b) the bringing of the prisoner back to the State and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

(4) The Minister shall not issue a warrant under *subsection (1)* of this section unless provision is made by the law of the country or territory or by arrangement with the appropriate authority thereof that the prisoner will not be proceeded against, sentenced, detained or subjected to any other restriction on his personal freedom in respect of any offence against the law of that country or territory committed before his departure from the State.

(5) Where a warrant has been issued in respect of a prisoner under this section, he shall be deemed to be in legal custody at any time when he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(6) A person authorised by or for the purposes of a warrant issued under this section to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a member of the Garda Síochána.

(7) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a member of the Garda Síochána and taken to any place to which he may be taken under a warrant issued under this section.

(8) This section shall apply to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine or a sum due under a confiscation order or confiscation co-operation order as it applies to a prisoner and the reference in *subsection (3) (b)* of this section to a sentence shall be construed accordingly.

Transfer of prisoner outside State to give evidence or assist investigation in State.

54. —(1) This section has effect where—

(a) a witness order has been made or a witness summons has been issued in criminal proceedings in the State in respect of a person ("a prisoner") who is detained in custody in a country or territory outside the State by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory, or

(b) it appears to the Minister that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in the State of an offence.

(2) If the Minister is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to the State to give evidence pursuant to the witness order or witness summons or, as the case may be, for the purpose mentioned in *subsection (1) (b)* of this section, he may issue a warrant under this section.

(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to the State to give evidence as aforesaid or, as the case may be, for the purpose mentioned in *subsection (1) (b)* of this section.

(4) The effect of a warrant under this section shall be to authorise—

(a) the bringing of the prisoner to the State,

(b) the taking of the prisoner to, and his detention in custody at, such place or places in the State as are specified in the warrant, and

(c) the returning of the prisoner to the country or territory from which he has come.

(5) *Subsections (5) to (7) of section 53* of this Act shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the controls imposed by the [Aliens Act, 1935](#) , and orders made thereunder in respect of his entry into or presence in the State in pursuance of a warrant under this section but if the warrant ceases to have effect while he is in the State, he shall be treated for the purposes of that Act and the orders made under it as if he had illegally entered the State and the provisions of that Act and any such orders shall apply to that person except that no carrier shall be liable for his expenses of custody.

(7) A person who is in the State pursuant to a warrant issued under this section shall not be proceeded against, sentenced, detained, or subjected to any other restriction on his personal freedom in respect of any offence committed against the law of the State before his arrival in the State.

(8) This section applies to a person detained in custody in a country or territory outside the State in consequence of having been transferred there

Search, etc. for material relevant to investigation outside State.

under any legislative or other arrangements for the repatriation of prisoners as it applies to a person detained as mentioned in *subsection (1)* of this section.

55.—(1) The Government may by order designate countries in relation to which this section shall apply.

(2) *Section 63* of this Act shall have effect as if references in that section to drug trafficking or 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 drug trafficking or an offence in respect of which a confiscation order might be made under *section 9* of this Act if it had occurred in the State.

(3) If, on an application made by the Director of Public Prosecutions or by a member of the Garda Síochána not below the rank of superintendent, a judge of the District Court is satisfied that—

(a) there are reasonable grounds for believing that an offence under the law of a country in relation to which this section applies has been committed, and

(b) the conduct constituting that offence would, if it had occurred in the State, constitute an offence in respect of which the judge would have power under any enactment to issue a search warrant in relation to any place,

then, subject to *subsection (4)* of this section, the judge shall have the same power to issue a search warrant authorising entry, search and seizure in relation to that place as he would have under the enactment in question in respect of an offence committed in the State.

(4) No application for a warrant shall be made under this section except in pursuance of a direction given by the Minister in response to a request received by him from the government of a country in relation to which this section applies and made—

(a) on behalf of a court or tribunal exercising criminal jurisdiction in the country in question or a prosecuting authority in that country, or

(b) on behalf of any other authority in that country which appears to the Minister to be an appropriate authority for the purpose of this section,

and any evidence seized by a member of the Garda Síochána by virtue of this section shall be furnished by him to the Minister for transmission to the government of the country concerned or, if that government so requests, to the court, tribunal or authority for which it has been obtained.

(5) If in order to comply with the request it is necessary for any evidence to which this section applies to be accompanied by any certificate, affidavit or

other verifying document, the member of the Garda Síochána shall also furnish for transmission such document of that nature as may be specified in the direction given by the Minister.

(6) Where the evidence consists of a document, the original or copy shall be transmitted, and, where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

(7) [Section 9](#) of the [Criminal Law Act, 1976](#) , (including, in particular, the restriction in subsection (2) of that section relating to the seizure or retention of any document that was or may have been made for the purpose of legal advice) shall apply in relation to a search carried out under this section as it applies to a search such as is mentioned in that section save that for the reference in subsection (1) of the said section 9 to the retention of a thing for use as evidence in any criminal proceedings there shall be substituted a reference to its retention for transmission in accordance with this section.

(8) The Government may amend or revoke an order made under this section including an order made under this subsection.

(9) An order under *subsection (1)* or (8) of this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

(10) The Minister shall not give a direction under *subsection (4)* of this section unless provision is made by the law of the country or by arrangement with the appropriate authority thereof that any evidence that may be furnished in response to the request will not, without his consent, be used for any purpose other than that specified in the request and that when such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it will be returned to him by the court, tribunal or authority that made the request under *subsection (4)* of this section unless he indicates that the evidence need not be returned.

(11) In this section "evidence" includes documents and other articles.

Provision of co-operation for international war crimes tribunals etc.

56. —(1) The Government may by regulations make such modifications of this Act as appear to it to be necessary or expedient for the purpose of adapting any of the provisions of this Part of this Act to enable the State to provide co-operation under those provisions for an international tribunal or other body established for the prosecution of persons responsible for serious violations of international humanitarian law committed outside the State.

(2) Where it is proposed to make regulations under *subsection (1)* of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such House.