

The Irish Experience in Policy-Making at National Level in the Field of Mutual Legal Assistance in Criminal Matters: Current and Planned Mutual Legal Assistance Legislation

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Mutual Legal Assistance

Overview of Presentation

- Mutual legal assistance provisions of Criminal Justice Act 1994
- Provisions of Criminal Justice (Mutual Assistance) Bill 2005 which will update and supplement mutual assistance regime as outlined in 1994 Act
- The legislative process in Ireland and how a Bill is formulated

Criminal Justice Act, 1994

- Legislation currently in force in field of mutual legal assistance
- Part VII contains mutual legal assistance provisions and comprises 11 sections

Criminal Justice Act, 1994

Section 46

- Section 46 provides for enforcement in Ireland of confiscation orders made by designated states
- High Court may make confiscation co-operation order on receipt of request
- Provisions included for revocation of confiscation co-operation order

Criminal Justice Act, 1994

Section 47

- Section 47 deals with enforcement in Ireland of forfeiture orders made by designated state
- High Court may make forfeiture co-operation order on application
- Order shall not be made if person with interest in the property applies to be heard by court

Criminal Justice Act, 1994

Section 48

- Section 48 deals with proof of documents
- Certificate recording the making of original order, detailing evidence and signed by or on behalf of judge in foreign court admissible as proof
- No further proof necessary

Criminal Justice Act, 1994

Section 49

- Section 49 deals with service of documents in Ireland requiring a person to appear as witness or defendant in trial abroad
- Safeguards included
- Notice must be given to person outlining safeguards and suggesting that legal advice be sought

Criminal Justice Act, 1994

Section 50

- Section 50 deals with service outside Ireland of documents issued in Ireland requesting a person to appear before a court charged with offence or as a witness
- No obligation of compliance
- A person who does comply may not be proceeded against for any other crime while he or she is in Ireland

Criminal Justice Act, 1994

Section 51

- Section 51 deals with taking of evidence in Ireland for use in another country
- Request must be received and Minister must be satisfied that offence appears to have been committed
- Judge nominated to hear evidence
- Any evidence furnished cannot be used for any other purpose without consent

Criminal Justice Act, 1994

Section 52

- Section 52 deals with obtaining evidence abroad for use in criminal proceedings in Ireland
- Judge issues letter of request on application if there are reasonable grounds for suspecting offence has been committed
- Any evidence obtained cannot be used for any other purpose without consent
- Evidence obtained may be excluded by court

Criminal Justice Act, 1994

Section 53

- Section 53 deals with transfer of prisoner in Ireland to another country to give evidence or assist in criminal proceedings
- Prisoner must consent to transfer
- Once transferred, prisoner may not be proceeded against or restricted in relation to any previous offence

Criminal Justice Act, 1994

Section 54

- Section 54 deals with prisoners transferred to Ireland to give evidence or assist in investigation
- Warrant for the prisoner's transfer may be issued
- Provisions to bypass immigration laws
- Person cannot be proceeded against or restricted in relation to any previous offence

Criminal Justice Act, 1994

Section 55

- Section 55 deals with searches in Ireland for material relevant to investigation in another country
- Request must be received and application to court for search warrant made
- Must be reasonable grounds for believing an offence has taken place
- Conduct must also carry the power of search in Ireland
- Evidence obtained can only be used in the specified case

Criminal Justice Act, 1994

Sections 56 and 56A

- Original section 56 dealt with co-operation in international war crimes tribunals - repealed in 1998
- New section 56A inserted in 1997 to ensure that revenue offence are also included in mutual assistance provisions

Criminal Justice (Mutual Assistance) Bill, 2005

- Not yet law
- Contains more extensive mutual assistance regime
- Gives effect to seven international instruments and repeals and re-enacts with amendments Part VII of the 1994 Act
- Completed passage through Upper House and has just commenced passage through Lower House

Criminal Justice (Mutual Assistance) Bill 2005

- 2000 EU Convention on Mutual Assistance in Criminal Matters
- 2001 Protocol to 2000 Convention
- Norway-Iceland Agreement on application of provisions of 2000 Convention and 2001 Protocol
- EU Council Framework Decision on execution of orders freezing property or evidence

- Second Additional Protocol to 1959 European Convention on Mutual Assistance in Criminal Matters
- Articles 49 and 51 of EU Schengen Convention
- 2003 Agreement on Mutual Legal Assistance between the EU and USA and related bilateral instrument between Ireland and USA

Part 1 of Bill

- Includes restrictions on providing assistance
- Provides for designation of states for purpose of mutual assistance
- General formalities and procedures for dealing with requests
- Provision for spontaneous exchange of information

Part 2 of Bill

- Gives effect to 2001 Protocol
- Order may be made by judge for account monitoring order or account information order in context of criminal investigation
- Provision for order to be amended or revoked
- Penalties for non-compliance

Part 3 of Bill

- Gives effect to interception provisions in 2000 Convention
- Interception of a person's telecommunications may be requested by Ireland but only if authorisation would be given domestically
- Ireland may intercept at request of Member State if certain conditions are met
- Indirect interception also provided for

Part 4 of Bill

- Gives effect to EU Framework Decision on freezing
- Order for freezing evidence may be made by court on application and transmitted to Member State
- Enforcement of external freezing order provided for
- Grounds for refusal to issue order to execute foreign freezing order also included

Part 5 of Bill

- Deals with confiscation and forfeiture orders
- Re-statement of similar provisions in 1994 Act
- New provisions allow for reciprocity

Part 6 of Bill

- Deals with the taking of evidence
- Judge may issue letter of request for evidence to be obtained abroad from person in context of criminal proceedings
- Also provides for evidence to be taken in Ireland on request from another country
- Person cannot be compelled to give evidence pursuant to request from another state

Part 6 of Bill

- Part 6 also provides for prisoner to be transferred from another country to give evidence or assist in criminal proceedings in Ireland
- Prisoner from Ireland may be transferred abroad for same purpose
- Consent must be given but under new provisions must be written consent

Part 6 of Bill

- Deals with taking evidence by television link abroad for use in criminal proceedings in Ireland
- Ireland may also take evidence for use in criminal proceedings abroad
- Contained in 2000 Convention and Second Additional Protocol
- Safeguards included

Part 6 of Bill

- Provision made for evidence to be taken by telephone link in Ireland for use in criminal proceedings abroad
- This provision not reciprocal

Part 6 of Bill

- Covers searches abroad for evidence pursuant to letter of request issued by judge in Ireland
- Another state may also request Ireland to search for evidence
- For Ireland to search for evidence, consent of occupier required or else search warrant must be obtained
- Evidence supplied may not be used for any purpose other than that specified

Part 6 of Bill

- The taking of identification evidence such as finger prints, bodily samples etc provided for
- Request may be made to Ireland or from Ireland to another country
- When a request is received from another country person not obliged to comply
- These provisions included following first EAW case in Ireland

Part 7 of Bill

- Makes provision for service of documents by hand and by post as in Article 5 of 2000 Convention and Article 16 of Second Additional Protocol
- Make provision for restitution of property as in Article 8 of 2000 Convention and Article 12 of Second Additional Protocol
- Also provides for controlled deliveries, giving effect to Article 12 of 2000 Convention and Article 18 of Second Additional Protocol

Part 8 of Bill

- Gives effect to EU-US Agreement on Mutual Legal Assistance and the bilateral Ireland-US Agreement
- Main provisions include taking testimony; providing documents, records or evidence; executing requests for search and seizure; freezing and forfeiting the proceeds etc of crime; joint investigation teams

Legislative Process

- Examine instruments for which legislation is required
- Identify provisions that require transposition
- Obtain agreement of Office of the Attorney General
- Draft the Heads of a Bill

Legislative Process

Drafting

- Seek approval of Government for Heads of the Bill
- Commence work on drafting the legislation in conjunction with Parliamentary Counsel
- Consult all relevant and interested parties
- Seek Government approval to publish Bill
- Publish Bill

Legislative Process

Parliament

- Bill published
- Completes Second, Committee, Report and Final Stages in either House of Parliament
- Bill passed by that House and referred to other House
- Bill completes Second, Committee, Report and Final Stages in other House

Legislative Process

Parliament

- Bill passed by second House
- Bill signed into law by President and becomes Act
- Act commenced in whole or in part by Minister

