



Number 30 of 2012

**EUROPEAN ARREST WARRANT (APPLICATION TO THIRD COUNTRIES AND AMENDMENT)
AND EXTRADITION (AMENDMENT) ACT 2012**

REVISED

Updated to 30 March 2021

This Revised Act is an administrative consolidation of the *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Residential Tenancies Act 2021 (5/2021)*, enacted 30 March 2021, and all statutory instruments up to and including the *European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021 (S.I. No. 150 of 2021)*, made 26 March 2021, were considered in the preparation of this Revised Act.

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**EUROPEAN ARREST WARRANT (APPLICATION TO THIRD COUNTRIES AND
AMENDMENT) AND EXTRADITION (AMENDMENT) ACT 2021**

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

European Arrest Warrant Acts 2003 and 2012: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 (30/2012)*), s. 1(2). The Acts in this group are:

- *European Arrest Warrant Act 2003 (45/2003)*
- *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 (30/2012)*

Extradition Acts 1965 to 2020: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020(23/2020)*), s. 1(7). The Acts in this group are:

- *Extradition Act 1965 (17/1965)*
- *Extradition (European Convention on the Suppression of Terrorism) Act 1987 (1/1987)*
- *Extradition (Amendment) Act 1987 (25/1987)*
- *Extradition (Amendment) Act 1994 (6/1994)*
- *Extradition (European Union Conventions) Act 2001 (49/2001)*
- *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 (30/2012), Part 4*
- *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 (8/2019), Part 13 (Repealed)*
- *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (23/2020), Part 16*



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ARRANGEMENT OF SECTIONS

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PRELIMINARY AND GENERAL

Section

1. Short title and collective citation.

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2. Order.

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9. Amendment of section 15 of Act of 2003.
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[No. 30.] *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012* [2012.]

14. Amendment of section 21 of Act of 2003.
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28. Amendment of section 25 of Act of 1965.
29. Amendment of section 27 of Act of 1965.
30. Insertion of section 28 in Act of 1965.
31. Amendment of section 29 of Act of 1965.
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Criminal Justice (Miscellaneous Provisions) Act 2009	2009, No. 28
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European Arrest Warrant Act 2003	2003, No. 45
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Extradition Act 1965	1965, No. 17
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[No. 30.] *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012* [2012.]

Extradition (Amendment) Act 1987	1987, No. 25
Extradition (Amendment) Act 1994	1994, No. 6
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AMENDMENT) AND EXTRADITION (AMENDMENT) ACT 2012**

REVISED

Updated to 30 March 2021

AN ACT TO PROVIDE FOR THE APPLICATION OF PROVISIONS OF THE EUROPEAN ARREST WARRANT ACT 2003 TO STATES OTHER THAN MEMBER STATES IN CERTAIN CIRCUMSTANCES; TO AMEND THE EUROPEAN ARREST WARRANT ACT 2003; TO AMEND THE EXTRADITION ACT 1965, THE EXTRADITION (AMENDMENT) ACT 1987 AND THE EXTRADITION (AMENDMENT) ACT 1994; TO GIVE EFFECT TO ARTICLE 2 OF COUNCIL FRAMEWORK DECISION 2009/299/JHA OF 26 FEBRUARY 2009¹ AMENDING FRAMEWORK DECISIONS 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA AND 2008/947/JHA, THEREBY ENHANCING THE PROCEDURAL RIGHTS OF PERSONS AND FOSTERING THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO DECISIONS RENDERED IN THE ABSENCE OF THE PERSON CONCERNED AT THE TRIAL; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[24th July, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title and collective citation.

1.— (1) This Act may be cited as the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012.

(2) The European Arrest Warrant Act 2003 and *Part 2* of this Act may be cited as the European Arrest Warrant Acts 2003 and 2012.

(3) The Extradition Acts 1965 to 2001 and *Part 4* of this Act may be cited as the Extradition Acts 1965 to 2012.

PART 2

**APPLICATION TO THIRD COUNTRIES OF EUROPEAN ARREST WARRANT
ACT 2003**

Order.

2.— (1) In this section—

¹ OJ No. L81 27.3.2009, p. 24

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

“European Union” has the same meaning as it has in the European Communities Act 1972;

F1[...]

F2[‘relevant Member State’ has the same meaning as it has in the Act of 2003;]

F3[‘third country’ means a country other than the State or a relevant Member State;]

(2) Subject to *subsections (3) and (4)*, the Minister for Foreign Affairs and Trade, after consultation with the Minister for Justice and Equality, may by order provide that all or any of the provisions of the Act of 2003 which would, apart from this section, apply only in relation to F3[relevant Member States] shall apply in relation to a third country.

(3) The Minister for Foreign Affairs and Trade may make an order under *subsection (2)* only where there is in force an agreement between the third country concerned and the European Union for the surrender of persons wanted for prosecution or punishment.

(4) The Minister for Foreign Affairs and Trade may include, in an order under *subsection (2)*, only such conditions, exceptions and qualifications to the Act of 2003 in relation to the third country concerned as are contained in the agreement referred to in *subsection (3)*.

(5) An order under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either such House within the next 21 days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

PART 3

AMENDMENTS TO EUROPEAN ARREST WARRANT ACT 2003

Interpretation — **3.**— In this Part, “Act of 2003” means the European Arrest Warrant Act 2003.
Part 3.

Amendment of **4.**— Section 2(1) of the Act of 2003 is amended by the insertion of the following definition:
section 2 of Act of 2003.

“ ‘Council Framework Decision 2009/299/JHA’ means Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial,”.

Amendment of **5.**— Section 10 (inserted by section 71 of the Criminal Justice (Terrorist Offences) Act 2005) of the Act of 2003 is amended by substituting “subject to and in accordance with the provisions of this Act, be arrested” for “subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested”.
section 10 of Act of 2003.

Amendment of **6.**— The following is substituted for section 11(1) (inserted by section 72 of the Criminal Justice (Terrorist Offences) Act 2005) of the Act of 2003:
section 11 of Act of 2003.

PT. 3 S. 6. [No. 30.] *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012* [2012.]

“(1) A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA.”.

Amendment of section 12 of Act of 2003. 7.— Section 12 of the Act of 2003 is amended by inserting the following subsection after subsection (3A) (inserted by section 73(b) of the Criminal Justice (Terrorist Offences) Act 2005):

“(3B) The written record of a document that is transmitted in accordance with subsection (3)(b) shall be deemed to be the document that was transmitted.”.

Amendment of section 13 of Act of 2003. 8.— (1) The following is substituted for section 13(2) (amended by section 9 of the Criminal Justice (Miscellaneous Provisions) Act 2009) of the Act of 2003:

“(2) If, upon an application under subsection (1), the High Court is satisfied that, in relation to a European arrest warrant, there has been compliance with the provisions of this Act, it may endorse the European arrest warrant for execution.”.

(2) Section 13(3) of the Act of 2003 is amended by substituting “and the warrant or the true copy of the warrant, as the case may be, endorsed” for “and the warrant, the true copy of the warrant, as the case may be, endorsed”.

Amendment of section 15 of Act of 2003. 9.— Section 15 (amended by section 11 of the Criminal Justice (Miscellaneous Provisions) Act 2009) of the Act of 2003 is amended—

(a) by substituting the following for paragraph (d) of subsection (1):

“(d) if the surrender of the person is not prohibited by Part 3,”

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

“(d) if the surrender of the person is not prohibited by Part 3,”

and

(c) by substituting the following for subsections (3) to (9):

“(3) An order under subsection (1) or (2) shall, subject to section 18, 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, on the application of the Central Authority in the State and with the consent of the person to whom the order applies, directs.

(3A) Subject to subsections (5) and (6), a person to whom an order for the time being in force under subsection (1) or (2) applies shall be surrendered to the issuing state concerned not later than 10 days after the order takes effect in accordance with subsection (3).

(3B) An appeal against an order under subsection (1) or (2), or a decision not to make such an order, may be brought in the Supreme Court if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(4) Where the High Court makes an order under subsection (1) or (2), it shall, unless it orders postponement of surrender under section 18—

(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,

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- (b) record in writing that the person concerned has consented to his or her being surrendered to the issuing state concerned,
- (c) order that that person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 20 days pending the carrying out of the terms of the order, and
- (d) direct that the person be again brought before the High Court—
 - (i) if he or she is not surrendered before the expiration of the time for surrender under subsection (3A), as soon as practicable after that expiration, or
 - (ii) if it appears to the Central Authority in the State that, because of circumstances beyond the control of the State or the issuing state concerned, that person will not be surrendered on the expiration referred to in subparagraph (i), before that expiration.

(5) Where a person is brought before the High Court pursuant to subsection (4)(d), the High Court shall—

- (a) if satisfied that, because of circumstances beyond the control of the State or the issuing state concerned, the person was not surrendered within the time for surrender under subsection (3A) or, as the case may be, will not be so surrendered—
 - (i) with the agreement of the issuing judicial authority, fix a new date for the surrender of the person, and
 - (ii) order that the person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 10 days after the date fixed under subparagraph (i), pending the surrender,

and

- (b) in any other case, order that the person be discharged.

(5A) A person to whom an order for the time being in force under subsection (5)(a) applies—

- (a) shall be surrendered to the issuing state concerned not later than 10 days after the new date fixed under that subsection, or
- (b) if surrender under paragraph (a) has not been effected, shall be discharged.

(5B) Where a person is ordered, under subsection (4)(c), to be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) and is brought before the High Court pursuant to subsection (4)(d), the person shall be deemed to be in lawful custody at all times beginning at the time of the making of the order under subsection (4)(c) and ending when he or she is brought before the Court.

(6) Where a person—

- (a) lodges an appeal pursuant to subsection (3B), or
- (b) 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 appeal or complaint are pending.

(7) Where a person lodges an appeal pursuant to subsection (3B), the High Court may remand the person in custody or on bail pending the hearing of the appeal and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.”

Amendment of section 16 of Act of 2003.

10.— Section 16 (amended by section 76 of the Criminal Justice (Terrorist Offences) Act 2005) of the Act of 2003 is amended—

(a) by substituting the following for paragraph (c) of subsection (1):

“(c) the European arrest warrant states, where appropriate, the matters required by section 45 (inserted by *section 23* of the *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012*),”

(b) by substituting the following for paragraph (e) of subsection (1):

“(e) the surrender of the person is not prohibited by Part 3.”,

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

“(a) the European arrest warrant, including, where appropriate, the matters required by section 45 (inserted by *section 23* of the *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012*), is provided to the court,”

(d) by substituting the following for paragraph (d) of subsection (2):

“(d) the surrender of the person is not prohibited by Part 3.”,

and

(e) by substituting the following for subsections (3) to (13):

“(3) An order under subsection (1) or (2) shall, subject to section 18, 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, on the application of the Central Authority in the State and with the consent of the person to whom the order applies, directs.

(3A) Subject to subsections (5) and (6), a person to whom an order for the time being in force under subsection (1) or (2) applies shall be surrendered to the issuing state concerned not later than 10 days after the order takes effect in accordance with subsection (3).

(4) Where the High Court makes an order under subsection (1) or (2), it shall, unless it orders postponement of surrender under section 18—

(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) order that that person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 25 days pending the carrying out of the terms of the order, and

(c) direct that the person be again brought before the High Court—

(i) if he or she is not surrendered before the expiration of the time for surrender under subsection (3A), as soon as practicable after that expiration, or

- (ii) if it appears to the Central Authority in the State that, because of circumstances beyond the control of the State or the issuing state concerned, that person will not be surrendered on the expiration referred to in subparagraph (i), before that expiration.

(5) Where a person is brought before the High Court pursuant to subsection (4)(c), the High Court shall—

- (a) if satisfied that, because of circumstances beyond the control of the State or the issuing state concerned, the person was not surrendered within the time for surrender under subsection (3A) or, as the case may be, will not be so surrendered—

- (i) with the agreement of the issuing judicial authority, fix a new date for the surrender of the person, and

- (ii) order that the person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 10 days after the date fixed under subparagraph (i), pending the surrender,

and

- (b) in any other case, order that the person be discharged.

(5A) A person to whom an order for the time being in force under subsection (5)(a) applies—

- (a) shall be surrendered to the issuing state concerned not later than 10 days after the order takes effect, or

- (b) if surrender under paragraph (a) has not been effected, shall be discharged.

(5B) Where a person is ordered, under subsection (4)(b), to be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) and is brought before the High Court pursuant to subsection (4)(c), the person shall be deemed to be in lawful custody at all times beginning at the time of the making of the order under subsection (4)(b) and ending when he or she is brought before the Court.

(6) Where a person—

- (a) lodges an appeal pursuant to subsection (11), or

- (b) 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 appeal or complaint are pending.

(7) Where the High Court decides not to make an order under subsection (1) or (2)—

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

- (b) the person shall, subject to subsection (8), be released from custody.

(8) Subsection (7)(b) shall not apply if—

- (a) (i) the person has been sentenced to a term of imprisonment,

(ii) on the date on which he or she would, but for this subsection, be entitled to be released under subsection (7), 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 in the State,

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) 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 subsection (1) or (2) or subsection (1) or (2) of section 15, or has decided not to make an order under subsection (1) or (2), 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.

(10) 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 subsection (1) or (2) or subsection (1) or (2) of section 15, or has decided not to make an order under subsection (1) or (2), 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 reason therefor specified in the direction, and the Central Authority in the State shall comply with such direction.

(11) An appeal against an order under subsection (1) or (2) or a decision not to make such an order may be brought in the Supreme Court if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(12) Where a person lodges an appeal pursuant to subsection (11), the High Court may remand the person in custody or on bail pending the hearing of the appeal and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.”

Amendment of section 18 of Act of 2003.

11.— The following is substituted for section 18 of the Act of 2003:

“18.— (1) The High Court may direct that the surrender of a person to whom an order under subsection (1) or (2) of section 15 or subsection (1) or (2) of section 16 applies be postponed in accordance with this section where—

(a) the High Court is satisfied that circumstances exist that would warrant that postponement, on humanitarian grounds, including that a manifest danger to the life or health of the person concerned would likely be occasioned by his or her surrender to the issuing state,

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

(c) the person has been sentenced to a term of imprisonment for an offence and is required to serve all or part of that term of imprisonment in the State.

(2) The postponement shall continue until the High Court makes an order under subsection (4).

(3) Where the High Court decides to postpone a person's surrender under this section, it shall 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.

(4) The High Court shall make an order ending the postponement of surrender—

(a) where paragraph (a) of subsection (1) applies, when the High Court is satisfied that the circumstances referred to in that paragraph no longer exist,

(b) where paragraph (b) of subsection (1) applies, when the High Court is satisfied that the proceedings in respect of the offence concerned have been finally determined (where the person concerned is not required to serve a term of imprisonment), or

(c) where paragraph (c) of subsection (1) applies, when the High Court is satisfied that the person concerned is no longer required to serve any part of the term of imprisonment concerned.

(5) Section 15 or 16, as the case may be, shall apply to the person concerned as of the date of the order under subsection (4) as though that order were an order made under subsection (1) or (2) of section 15 or (1) or (2) of section 16, as the case may be.”.

Amendment of section 19 of Act of 2003.

12.— The following is substituted for section 19(1) of the Act of 2003:

“(1) Where a person to whom an order under section 15 or 16 applies has been sentenced to a term of imprisonment for an offence and is, at the time of the making of the order, required to serve all or part of that term of imprisonment in the State, the High Court may, subject to such conditions as it shall specify, direct that the person be surrendered to the issuing state for the purpose of his or her being tried for the offence to which the European arrest warrant concerned relates.”.

Amendment of section 20 of Act of 2003.

13.— Section 20 of the Act of 2003 is amended by deleting subsections (3) and (4).

Amendment of section 21 of Act of 2003.

14.— The following is substituted for section 21 of the Act of 2003:

“21.— (1) The Minister may direct that a person remanded in custody under this Act or detained in a prison or remand institution pursuant to an order under subsection (1) or (2) of section 15 or (1) or (2) of section 16 be removed to a hospital or any other place if the Minister considers that in the interests of the person's health, it is necessary that he or she 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 detained in a prison or remand institution pursuant to an order under subsection (1) or (2) of section 15 or (1) or (2) of section 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 detained in 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 detained in 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’.

Amendment of section 22 of Act of 2003. **15.**— The following is substituted for section 22(8) (inserted by section 80 of the Criminal Justice (Terrorist Offences) Act 2005) of the Act of 2003:

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

Amendment of section 23 of Act of 2003. **16.**— The following is substituted for section 23(6) (inserted by section 81 of the Criminal Justice (Terrorist Offences) Act 2005) of the Act of 2003:

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

Amendment of section 29 of Act of 2003. **17.**— Section 29(1) (amended by section 15 of the Criminal Justice (Miscellaneous Provisions) Act 2009) of the Act of 2003 is amended by substituting “subsection (1) or (2) of section 15 or (1) or (2) of section 16” for “section 15, or subsection (1) or (2) of section 16”.

Amendment of section 30 of Act of 2003. **18.**— The following is substituted for section 30 of the Act of 2003:

“30.— (1) If the Central Authority in the State receives a European arrest warrant in respect of a person and the State receives a request from a third country for the extradition of that person, the Central Authority in the State shall, where an order has not yet been made under subsection (1) or (2) of section 15, or subsection (1) or (2) of section 16, in relation to the person, so inform the High Court, and the High Court shall not perform functions under this Act in relation to the European arrest warrant, unless the Minister has informed the High Court that—

(a) the request for extradition is not being proceeded with, or

(b) the European arrest warrant is to have precedence over the request for extradition.

(2) If the Central Authority in the State receives a European arrest warrant in respect of a person and the State receives a request from the International Criminal Court for the arrest and surrender of the same person, the Central Authority in the State shall, where an order has not yet been made under subsection (1) or (2) of section 15, or subsection (1) or (2) of section 16, in relation to that person, so inform the High Court, and the High Court shall not perform functions under this Act in relation to the European arrest warrant, unless the arrest and surrender of that person pursuant to such a request is prohibited, or not provided for, under the law of the State.”

PT. 3 S. 19. [No. 30.] *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012* [2012.]

Amendment of section 33 of Act of 2003. **19.**— Section 33 (amended by section 16 of the Criminal Justice (Miscellaneous Provisions) Act 2009) of the Act of 2003 is amended—

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

“33.— (1) A court may, upon an application made by or on behalf of the Director of Public Prosecutions, issue a European arrest warrant in respect of a person where it is satisfied that—

(a) a domestic warrant has been issued for the arrest of that person but has not been executed, and

(b) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence concerned and the person is required to serve all or part of that term of imprisonment or detention, or, as the case may be, the person would, if convicted of the offence concerned, be liable to a term of imprisonment or detention of 12 months or more than 12 months.”,

(b) by repealing subsection (1B),

(c) in subsection (2), by inserting “as amended by Council Framework Decision 2009/299/JHA” after “Framework Decision”, and

(d) in subsection (5)(a), by substituting “to which subsection (1)(a) applies” for “to which subparagraph (i) of section 33(1)(a) applies”.

Amendment of section 35 of Act of 2003. **20.**— Section 35(1)(a) of the Act of 2003 is amended by deleting “subparagraph (i) of” before “section 33(1)(a)”.

Amendment of section 38 of Act of 2003. **21.**— Section 38(1)(b) of the Act of 2003 is amended by deleting “or is an offence that consists of conduct specified in that paragraph,”.

Amendment of section 42 of Act of 2003. **22.**— Section 42(b) (inserted by section 83 of the Criminal Justice (Terrorist Offences) Act 2005) of the Act of 2003 is amended by substituting “proceedings are pending” for “proceedings have been brought”.

Amendment of section 45 of Act of 2003. **23.**— The following is substituted for section 45 (inserted by section 20 of the Criminal Justice (Miscellaneous Provisions) Act 2009) of the Act of 2003:

“45.— A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to this section.

TABLE

(d) Indicate if the person appeared in person at the trial resulting in the decision:

1. Yes, the person appeared in person at the trial resulting in the decision.

2. No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.1a. the person was summoned in person on . . . (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision

and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

3.3. the person was served with the decision on . . . (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision,

OR

the person did not request a retrial or appeal within the applicable time frame;

OR

3.4. the person was not personally served with the decision, but

—the person will be personally served with this decision without delay after the surrender, and

—when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

—the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be . . . days.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

”.

Amendment of section 45C of Act of 2003.

24.— The following is substituted for section 45C (inserted by section 20(b) of the Criminal Justice (Miscellaneous Provisions) Act 2009) of the Act of 2003:

“45C.— For the avoidance of doubt, an application for surrender under section 16 shall not be refused if the Court is satisfied that no injustice would be caused to the person even if—

(a) there is a defect in, or an omission of, a non-substantial detail in the European arrest warrant or any accompanying document grounding the application,

(b) there is a variance between any such document and the evidence adduced on the part of the applicant at the hearing of the

application, so long as the Court is satisfied that the variance is explained by the evidence, or

- (c) there has been a technical failure to comply with a provision of this Act, so long as the Court is satisfied that the failure does not impinge on the merits of the application.”.

PART 4

AMENDMENTS TO EXTRADITION ACT 1965

- Interpretation. **25.**— In this Part, “Act of 1965” means the Extradition Act 1965.
- Repeal of section 7B of Act of 1965. **26.**— Section 7B (inserted by section 22 of the Extradition (European Union Conventions) Act 2001) of the Act of 1965 is repealed.
- Amendment of sections 15 to 17 of Act of 1965. **27.**— The following is substituted for sections 15 to 17 of the Act of 1965:
“Proceedings in State for same offence.
15.— (1) Extradition shall not be granted for an offence which is also an offence under the law of the State if—
(a) the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring proceedings for the offence against the person claimed, or
(b) proceedings for the offence are pending in the State against the person claimed.
(2) Extradition may be refused by the Minister for an offence which is also an offence under the law of the State if the Director of Public Prosecutions or the Attorney General has decided either not to institute or to terminate proceedings against the person claimed in respect of the offence.
Persons convicted *in absentia*.
16.— Extradition shall not be granted where the person claimed is being requested for the carrying out of a sentence and he or she did not appear in person at the trial resulting in the sentence, unless the requesting country has given an undertaking in writing to the Minister that the person claimed may have his or her conviction set aside and will, upon being surrendered, be given the opportunity of a retrial in respect of that offence.
Non bis in idem. **17.**— Extradition shall not be granted if final judgment has been passed in the State or, in accordance with the law of a third country, in that third country, upon the person claimed in respect of the offence for which extradition is requested.”.
- Amendment of section 25 of Act of 1965. **28.**— Section 25(1) of the Act of 1965 is amended—
(a) in paragraph (c), by inserting “or reproduction” after “copy”, and
(b) in paragraph (d), by inserting “including, where available, any fingerprint, palmprint or photograph,” after “nationality”.
- Amendment of section 27 of Act of 1965. **29.**— Section 27 of the Act of 1965 is amended—
(a) in subsection (2)—

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- (i) in paragraph (b), by substituting “committed,” for “committed, and”,
- (ii) in paragraph (c), by substituting “sought, and” for “sought.”, and
- (iii) by inserting the following paragraph after paragraph (c):

“(d) include a statement setting out the ground of urgency concerned.”,

(b) in subsection (3), by substituting “in writing, or by any means capable of producing a written record under conditions allowing its authenticity to be established” for “by post or telegraph or by any other means affording evidence in writing”, and

(c) in subsection (6) (inserted by section 20(1)(d) of the Extradition (European Union Conventions) Act 2001), by substituting “under section 35” for “under section 35,”, and by deleting the remainder of that subsection.

Insertion of section 28 in Act of 1965.

30.— The Act of 1965 is amended by inserting the following after section 27:

“Power of adjournment and remand.

28.— (1) The High Court may, if it considers it appropriate to do so in the interests of justice, adjourn any proceedings under this Act either on application or of its own motion, and may remand the person concerned in custody or on bail for the period of the adjournment or such other period as it considers appropriate.

(2) The High Court shall have and may exercise the same powers of remand in relation to any person appearing before it under this Act as it would have if the person were a person brought before it and charged with an indictable offence, including the power to remand the person pending determination of an appeal to the Supreme Court against a decision of the High Court.”.

Amendment of section 29 of Act of 1965.

31.— The following is substituted for section 29(2) (inserted by section 9 of the Extradition (Amendment) Act 1994) of the Act of 1965:

“(2) For the avoidance of doubt, the Court, if satisfied that no injustice would be caused to the person by making an order under subsection (1), may make that order even if—

- (a) there is a defect in, or an omission of, a non-substantial detail in the request for extradition or any document supporting the request,
- (b) there is a variance between any such document and the evidence adduced before the Court, so long as the Court is satisfied that the variance is explained by the evidence, or
- (c) there has been a technical failure to comply with a provision of this Act, so long as the Court is satisfied that the failure does not impinge on the merits of the request for extradition.”.

Insertion of section 36A in Act of 1965.

32.— The Act of 1965 is amended by inserting the following after section 36:

“Identification procedures.

36A.— (1) Where a member of the Garda Síochána arrests a person under any power conferred by this Act, the member of the Garda Síochána may, in order to assist in verifying or establishing the person’s identity for the purpose of proceedings under this Act and for no other purpose—

- (a) take, or cause to be taken, his or her fingerprint,

(b) take, or cause to be taken, his or her palmprint,

(c) photograph him or her or cause him or her to be photographed.

(2) Where a fingerprint, palmprint or photograph taken pursuant to subsection (1) is lost or damaged, or is otherwise unsuitable for use for the purpose referred to in that subsection, it may be taken on a second or any further occasion.

(3) The powers conferred by subsection (1) shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of inspector.

(4) A member of the Garda Síochána may, where a person fails or refuses to allow his or her fingerprint, palmprint or photograph to be taken pursuant to subsection (1), use such force as he or she reasonably considers necessary to take the fingerprint, palmprint or photograph or to cause the fingerprint, palmprint or photograph to be taken.

(5) (a) The powers conferred by subsection (4) shall not be exercised except on the authorisation of a member of the Garda Síochána not below the rank of superintendent.

(b) An authorisation pursuant to paragraph (a) may be given orally or in writing and, if given orally, shall be confirmed in writing as soon as practicable.

(6) Where a member of the Garda Síochána intends to exercise a power conferred by subsection (4), he or she shall inform the person—

(a) of that intention, and

(b) that an authorisation to do so has been given pursuant to subsection (5)(a).

(7) Every fingerprint, palmprint or photograph taken pursuant to subsection (4) shall be taken in the presence of a member of the Garda Síochána not below the rank of inspector.

(8) The taking of every fingerprint, palmprint or photograph pursuant to subsection (4) shall be video-recorded.

(9) Every fingerprint, palmprint or photograph of a person taken in pursuance of a power conferred by this section and every copy and record thereof shall be destroyed within the period of 12 months from the date of the taking of the fingerprint, palmprint or photograph, as the case may be, or on the conclusion of proceedings under this Part in relation to the person, whichever occurs later.

(10) A person who obstructs a member of the Garda Síochána in the exercise of a power under this section shall be guilty of an offence and shall, on summary conviction, be liable to a class A fine or to imprisonment for a term not exceeding 12 months or to both.

(11) Where a fingerprint, palmprint or photograph is transmitted by or on behalf of a requesting country, such fingerprint, palmprint or photograph shall be received in evidence without further proof.”

Amendment of section 37 of Act of 1965. **33.**— Section 37(1) (inserted by section 17(b) of the Extradition (European Union Conventions) Act 2001) of the Act of 1965 is amended—

(a) by substituting “a document supporting a request for extradition, and any evidence in writing received, from a requesting country” for “a document supporting a request for extradition from a requesting country”, and

(b) in paragraph (a), by inserting “sealed or” after “to be”.

PART 5

AMENDMENTS TO OTHER ACTS

Repeal of section 6 of Extradition (Amendment) Act 1987. **34.**— Section 6 of the Extradition (Amendment) Act 1987 is repealed.

Repeal of section 15 of Extradition (Amendment) Act 1994. **35.**— Section 15 of the Extradition (Amendment) Act 1994 is repealed.