



**AN BILLE UM CHEARTAS COIRIÚIL (FORÁLACHA
ILGHNÉITHEACHA) 2009**
**CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS)
BILL 2009**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to amend certain provisions of the Criminal Law which have been identified as requiring amendment in light of their operation since enactment, to update their provisions in line with current requirements in the operation of the criminal justice system and to give further effect to the Council Decision 2207/533/JHA of 12 June 2007 in relation to the establishment and operation of the Schengen Information System (SIS). The main provisions of the Bill amend the following statutes: The Firearms Acts 1925 - 2007, the European Arrest Warrant Act 2003, the Bail Act 1997, the Criminal Justice (Theft and Fraud Offences) Act 2001, the Criminal Justice Act 1984 and the Summary Jurisdiction Act 1857.

Provisions of the Bill

PART 1 — PRELIMINARY
(Sections 1 to 3)

Short title and commencement

Section 1 is a standard feature. It gives a convenient Short Title of the Bill when enacted for ease of reference. It also provides that the Bill or specific provisions of it may come into force on a day or days that the Minister may decide by order or orders as he/she feels is appropriate.

Interpretation

Section 2 defines references to various statutes referred to throughout the Bill to obviate the need to set out the full title of each statute referred to throughout the Bill.

Expenses

Section 3 is a standard provision for the Exchequer to bear the cost of administering the Bill when enacted.

PART 2 — AMENDMENTS TO THE EUROPEAN ARREST
WARRANT ACT 2003
(Sections 4 to 18)

Part 2 amends the European Arrest Warrant Act 2003 (as amended by the Criminal Justice (Terrorist Offences) Act 2005). That Act gave effect to the EU Framework Decision on the European arrest warrant and the surrender procedures between Member States.

Section 4 (Interpretation)

This section amends subsection 2 (1) of the European Arrest Warrant Act 2003 (as amended).

Subsection 4(a) inserts a definition of an ‘*alert*’ for the purposes of the Act which defines it as an alert entered in the SIS for the arrest and surrender, on foot of a European arrest warrant, of the person named in the warrant. This definition relates to the provisions of section 10 of this Bill. SIS is defined at section 4(d) of this Bill.

Subsection 4(b) inserts a definition of ‘*Council Decision*’ for the purposes of the Act which defines it as meaning Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System.

Subsection 4(c) deletes the reference to ‘*facsimile copy*’ in section 2 of the European Arrest Warrant Act 2003 (as amended) as part of the deletion of all references to ‘*facsimile*’ throughout that Act by this Bill. New provisions on transmission of documents are set out in section 12 of this Bill.

Subsection 4(d) inserts a definition of ‘*Schengen Convention*’ which distinguishes it from the definition of ‘*Council Decision*’ at (b) above. It also inserts a definition of ‘*SIS*’ which provides that it can refer to either the system under the ‘*Council Decision*’ or the ‘*Schengen Convention*’ as appropriate.

Section 5 (Application of the Act)

Subsections 4(2) and (3) of the European Arrest Warrant Act 2003 were inserted to accommodate declarations made by Austria, Italy and France pursuant to Article 32 of the Framework Decision on the European arrest warrant that, as executing states, they would continue to deal with requests relating to acts committed before the dates specified in accordance with the extradition system applicable before 1 January 2004.

An unintended effect of the subsections is that Ireland cannot accept European arrest warrants from these countries relating to acts committed before the dates specified. The section is being amended in order to remedy this. Subsection 5(a) of the Bill amends subsection (1) by deleting the reference to subsections (2) and (3) and provides for a consequential amendment to the wording of the subsection. Subsection 5(b) deletes subsections (2) and (3) of the section.

Section 6 (Obligation to surrender)

This section amends section 10 of the European Arrest Warrant Act 2003 (as amended).

Subsection 6(a) deletes the word ‘*duly*’. This word is capable of being interpreted as meaning that the validity of a European arrest

warrant may be enquired into by an Irish Court. This is not in keeping with the principle of mutual recognition on which the European arrest warrant is based and it is, therefore, being deleted.

Subsection 6(b) amends subsection 10(d) of the Act by deleting words which limit the scope of application of European arrest warrants, in cases where a sentence of imprisonment or detention has been imposed, to those where the person had fled from the issuing state. As it is not a formal requirement of the Framework Decision, it is being deleted to simplify applications for surrender where imprisonment or detention are concerned.

Section 7 (European arrest warrant)

This section amends section 11 of the European Arrest Warrant Act 2003 (as amended).

Subsection 7(a) amends subsection 11(1A) by substituting in paragraph (e) for “*the offence*” of “*one of the offences to which the European arrest warrant relates*”. The purpose of this amendment is to remove any ambiguity which may arise as to the interpretation of the subsection by clarifying that it is sufficient, for the purposes of the subsection, that an arrest warrant has been issued by a judicial authority in the issuing state for one of the offences to which the European arrest warrant relates.

Subsection 7(b) is a technical amendment to section 11(2) of the Act. The reference in that subsection should be to subsection (1A) rather than subsection (1) and this amendment substitutes (1A) for (1).

Section 8 (Transmission of European arrest warrant)

This section amends section 12 of the European Arrest Warrant Act 2003 (as amended).

Subsection 8(a)(i) amends subsection 12(3) of the Act by extending the provisions of the section in relation to the transmission of European arrest warrants to any document required to be transmitted under the Act.

Subsection 8(a)(ii) substitutes paragraph (b) of section 12(3) of the Act and inserts a new provision which allows for the transmission of European arrest warrants and any document required to be transmitted under the Act by any means capable of producing a written record under conditions allowing the Central Authority in the State to establish its authenticity. This provision is intended to allow for the use of modern means of communication, including email, in the transmission of documents once their authenticity can be verified.

Subsections 8(b) and (c) delete the provisions of subsections 12(4), (5), (6) and (9) of the Act which are no longer necessary having regard to the provisions of subsection 8(a)(ii) of the Bill.

Section 9 (Application to High Court for endorsement to execute European arrest warrant)

This section amends section 13 of the European Arrest Warrant Act 2003 (as amended).

Subsections 9(a), (b) and (c) amend subsections 13(1), (2) and (3) of the Act by deleting the references to ‘*facsimile copy*’. This is consequential to the provisions on transmission of documents in subsection 8(a)(ii) of the Bill.

Section 10 (Arrest without warrant for surrender purposes)

Section 10 substitutes Section 14 of the European Arrest Warrant Act 2003 (as amended). That section dealt with arrest without warrant on grounds of urgency where a Schengen alert had issued. The substituted section 14 is of more general application to arrest where an alert has issued.

Subsection 10(1) provides that a Garda may arrest, without warrant, any person who he or she has reasonable grounds to believe is a person named in an alert as defined in section 2, as amended by section 4 of this Bill, of the European Arrest Warrant Act 2003 (as amended).

Subsection 10(2) sets out the requirement that a person arrested under (1) is to be informed in ordinary language of the reason for the arrest and informed of the right to legal representation and the services of an interpreter.

Subsection 10(3) sets out what is to happen to the person post arrest under (1). It provides at (a) that the person is to be given a copy of the alert on foot of which the arrest was made. Subsection 10(3)(b) provides that the person is to be brought before the High Court as soon as possible after the arrest and requires the High Court at (i)(I), if it is satisfied that the person is the person named in the alert, to inform the person of the right to legal representation and to the services of an interpreter.

Subsection 10(3)(b)(ii) provides that the High Court can remand the person, in custody or on bail at its discretion, for a period of not more than 14 days for the production to the Court of the European arrest warrant to which the alert relates.

Subsection 10(4) sets out the procedure where the European arrest warrant in respect of a person remanded under subsection (3) is received. 10(4)(a) provides that the person is to be brought before the High Court as soon as may be, (b) that the warrant be produced to the Court and (c) that the person be given a copy of the warrant. (d) sets out the steps the High Court is to take. If the Court is satisfied the Act has been complied with and that the person is the person for whom the warrant was issued then (d)(i) requires the Court to inform the person that he or she may consent to being surrendered in accordance with section 15 of the Act. If the person does not consent then the Court under (d)(ii)(I) will remand the person, in custody or on bail at its discretion, to a date fixed, under (II) for the hearing of the surrender application under section 16 of the Act. This date must be within 21 days of the court appearance.

Subsection 10(5) provides that where the European arrest warrant is not produced to the High Court on the date fixed by the Court under 14(3)(b)(ii) the person shall be released.

Section 11 (Consent to surrender)

This section amends section 15 of the European Arrest Warrant Act 2003 (as amended).

Subsections 11(a) and (b) amend subsection 15(1)(a) by deleting the reference to '*facsimile*'. This is consequential to the provisions on transmission of documents in subsection 8(a)(ii) of this Bill.

Subsection 11(c) inserts a new subsection (3A) which restricts the grounds of appeal to the Supreme Court, against decisions made under the section, to cases which are certified by either the High

Court or the Attorney General as involving a point of law of exceptional public importance.

Subsection 11(d) is a technical amendment.

Subsection 11(e) amends subsection 15(6) to explicitly provide that, where a person has either lodged an appeal to the Supreme Court against an order for his or her surrender or, has made a complaint under Article 40.4.2 of the Constitution (Habeas Corpus application), he or she will not be surrendered while the appeal or complaint is pending.

Subsection 11(f) substitutes subsection 15(7) which provided that a person was to be released from custody if surrender was not effected within the time specified under subsection 15(5) unless Habeas Corpus proceedings referred to in subsection 15(6) were pending. The substituted text provides that, where surrender is not effected within the period specified in 15(5) and there are no appeal or Habeas Corpus proceedings as referred to in 15(6) pending, the High Court may remand the person, in custody or on bail, for a further period to enable surrender to be effected unless it considers it would be unjust or oppressive to do so.

Subsection 11(g) substitutes subsection 15(9). The new text inserted clarifies that, where an appeal is lodged to the Supreme Court under section 15(3), the High Court may remand the person, in custody or on bail, pending the hearing of the appeal.

Section 12 (Committal of person named in European arrest warrant)

This section amends section 16 of the European Arrest Warrant Act 2003 (as amended).

Subsection 12(a)(i) amends subsection 16(1) by the deletion of the reference to section 15. This is consequential on the deletion of the provision by subsection 11(g) of this Bill.

Subsection 12(a)(ii) amends subsection 16(1)(b) and (c) by the deletion of the reference to 'facsimile'. This is consequential to the provisions on transmission of documents in subsection 8(a)(ii) of this Bill.

Subsection 12(b)(i) amends subsection 16(2) by the deletion of the reference to section 15. This is consequential on the deletion of the provision by subsection 11(g) of this Bill.

Subsection 12(b)(ii) amends subsection 16(2)(a) by the deletion of the reference to 'facsimile'. This is consequential to the provisions on transmission of documents in subsection 8(a)(ii) of this Bill.

Subsection 12(c) is a technical amendment.

Subsection 12(d) amends subsection 16(6) to explicitly provide that, where a person has either lodged an appeal to the Supreme Court against an order for his or her surrender or, has made a complaint under Article 40.4.2 of the Constitution (Habeas Corpus application), he or she will not be surrendered while the appeal or complaint is pending.

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effected within the period specified in 16(5) and there are no appeal or Habeas Corpus proceedings as referred to in 16(6) pending, the High Court may remand the person, in custody or on bail, for a further period to enable surrender to be effected unless it considers it would be unjust or oppressive to do so.

Subsection 12(f) amends subsection 16(12) by substituting the provision of appeal on a point of law only with a provision for an appeal where the decision is certified by either the High Court or the Attorney General as involving a point of law of exceptional public importance.

Subsection 12(g) inserts a new subsection 16(13) which clarifies that, where an appeal is lodged to the Supreme Court under subsection 16(12), the High Court may remand the person, in custody or on bail, pending the hearing of the appeal.

Section 13 (Postponement of surrender)

This section amends section 18 of the European Arrest Warrant Act 2003 (as amended).

Subsection 13(a) substitutes a new subsection for subsection 18(3). The original text of 18(3) provides for the postponement of surrender in certain circumstances. Subsection 18(3)(i) provided that surrender, where a person was being proceeded against for an offence, could be postponed until the date of acquittal or conviction. The text is being amended to also provide for postponement until the final determination of the proceedings in order to cover other possible outcomes. Other changes in the new subsection are of a technical nature.

Subsection 13(b) is a technical amendment.

Section 14 (Multiple European arrest warrants)

Section 14 amends section 29 of the European Arrest Warrant Act 2003 (as amended). That section sets out the grounds on which the High Court shall decide to exercise its functions under the Act where two or more European arrest warrants are received in respect of the same person, *'neither of which or not all of which, as the case may be, have been issued by the same issuing state'*. The section as drafted does not provide for the situation where there is more than one judicial authority in an issuing state as is the position in many Member States. Section 14 of this Bill deletes the reference to issuing state and the amended section now applies to any case where more than one European arrest warrant is received in respect of a person, whatever the source.

Section 15 (Issue of European arrest warrant by court in the State)

Section 15 amends section 33 of the European Arrest Warrant Act 2003 (as amended).

Subsection 15(a) substitutes subsection 33(1)(a) of the Act which sets out the basis on which a court may issue a European arrest warrant. The amended text allows the court to issue a European arrest warrant, once satisfied that a domestic warrant is in existence for the person and that the Garda Síochána believes that the person is not in the State.

Subsections 15(b) and (c) amend subsections 33(1)(b)(i) and (1)(b)(ii) respectively. The purpose of the amendment in each case is to clarify that a European arrest warrant may issue where the person has been or is liable to be sentenced to imprisonment or

detention. This is in accordance with the Framework Decision and other provisions of the Act which provide for execution of European arrest warrants where the penalty is detention.

Subsection 15(d) inserts two new subsections in section 33. The first, (1A), provides that the issue of a warrant by a court will constitute a request by the court for the entry of an alert in the SIS, as defined in section 4 of this Bill. This is necessary as alerts can only be entered at the request of a judicial authority. The second, (1B), provides that for the purpose of satisfying a court that a person may not be in the State, as required by the amended subsection 33(1)(a), the statement to that effect of a Garda of sergeant or higher rank shall be admissible in evidence.

Section 16 (Transmission of European arrest warrant issued in the State)

This section amends section 34 of the European Arrest Warrant Act 2003 (as amended). The amendment provides that European arrest warrants issued in the State may rather than shall be transmitted by the Central Authority. This amendment recognises that warrants can also be transmitted via the SIS.

Section 17 (Passage of time from commission of offence)

Section 17 amends section 40 of the Act.

Section 40 transposes Article 4.4 of the Framework Decision on the European arrest warrant which is one of the optional grounds for non-execution of a warrant. It provides that surrender will not take place where the wanted person could not, by reason of passage of time, be proceeded against in the State in respect of an offence which corresponds to the offence to which the European arrest warrant relates. Difficulties have arisen in relation to the interpretation of this section and it is considered that the question of delay — passage of time from commission of the offence — is a matter for the court in the issuing state. The section is, therefore, being deleted.

Section 18

Section 18 amends section 45 of the European Arrest Warrant Act 2003 (as amended) and inserts three new sections into the Act.

Subsection 18(a) substitutes section 45. This is a technical amendment to correct duplication in the numbering of the subsections.

Subsection 18(b) inserts new sections 45A, 45B and 45C into the Act.

Section 45A (identification procedures)

Subsection 45A(1) authorises the Garda Síochána to photograph, fingerprint and palm print persons arrested under the Act for the sole purpose of verifying the persons identity. Identification material of this type is often sent with European arrest warrants and hitherto the Garda Síochána had no power to take similar identification material for comparison purposes.

Subsection 45A(2) provides that where material taken under (1) is lost, damaged or otherwise unsuitable it may be taken on a second or further occasion.

Subsection 45A(3) provides that the powers under (1) may only be exercised on the authority of a Garda of the rank of inspector or higher.

Subsection 45A(4) provides that a member of the Garda Síochána may use reasonable force to take material under (1) where the person fails or refuses to allow the material to be taken.

Subsection 45A(5) (a) provides that the powers under (1) may only be exercised on the authority of a Garda of the rank of superintendent or higher and subsection 45A(5)(b) that such authority may be given orally and if so given shall be confirmed in writing as soon as practicable.

Subsection 45A(6) provides that where a Garda intends to exercise the power under (4) he or she shall inform the person of that intention and that the exercise of the power has been authorised under (5)(a).

Subsection 45A(7) provides that material taken pursuant to this section shall be taken in the presence of a Garda of Inspector or higher rank.

Subsection 45A(8) provides that the taking of material pursuant to this section shall be video-recorded.

Subsection 45A(9) sets out the period for which the material may be retained and is in line with similar provisions in Criminal Justice legislation.

Subsection 45A(10) creates an offence of obstruction of a Garda in exercise of the powers under the section with penalties of €5,000 or 12 months imprisonment or both.

Subsection 45A(11) provides that identification material received from an issuing judicial authority shall be admissible in evidence without further proof.

Section 45B (*Transfer of persons to the state from which surrendered*)

Under Article 5.3 of the Framework Decision on the European arrest warrant, where a person whose surrender is sought for prosecution for an offence is a national or resident of the executing state, surrender may be subject to the condition that the person is returned after the trial to the executing state to serve any sentence imposed.

Subsection 45B(1) provides that in cases where the condition of return is imposed by an executing state, the Minister shall, with the consent of the person, issue a warrant for the transfer of the person to the executing state to serve the sentence imposed.

Subsection 45B(2) provides that a warrant issued under (1) will be authority for all stages of the person's removal from the state to the other state and (3) provides that the person shall be in lawful custody while held under the warrant. (4) allows the Minister to designate authorised persons for the purposes of (2) and (3) and (5) provides that a person authorised under (4) shall have the same powers as a member of the Garda Síochána while so acting.

Subsection 45B(6) provides that the original detention order in the State shall remain in force after the transfer of the person to the executing state so the person can be detained under the order if he or she returns to the State.

Section 45C (*Technical flaws in applications for surrender*)

This new section provides at (1) that applications for surrender shall not be refused due to minor or technical defects in the application or evidence adduced at the hearing. An important safeguard for the requested person is provided at (2) which provides that (1) shall not apply where the Court considers an injustice would be done.

PART 3 — SCHENGEN INFORMATION SYSTEM (Sections 19 to 22)

Section 19 is a standard interpretation section defining the primary terms referred to in this Part.

Section 20

The purpose of this section is to address matters relating to information exchange.

Subsection (1) of Section 20 permits information to be exchanged via the Schengen Information System by members of An Garda Síochána, an officer of the Revenue Commissioners or other designated persons.

Subsection (2) permits the Minister to make an order designating a person or category of persons to provide and receive this information.

Subsection (3) directs that any such order shall be laid before the Houses of the Oireachtas.

Section 21

The purpose of this section is to address matters that arise in the context of the operation of the Schengen Information System and in accompanying data protection measures which are provided for in the Schengen Convention.

Subhead (1) provides for the Data Protection Commissioner to assume certain supervisory functions which arise under the Schengen Convention.

Subhead (2) provides for the Data Protection Acts 1988 and 2003 to apply in relation to the operation of the Schengen Information System.

Section 22 amends section 27 of the Extradition Act 1965 setting out that an alert within the meaning of the SIS will be deemed to be a request for the provisional arrest of the person named and that the Director of Public Prosecutions will be the judicial authority for the purpose of requesting entry of an alert in the SIS. The amendment further provides that a request for extradition by the Director of Public Prosecutions will constitute a request for entry of an alert on the SIS.

PART 4 AMENDMENTS TO THE FIREARMS ACTS 1925-2007 (Sections 23 to 39)

Section 23 (Amendment to section 1 of Principal Act)

Section 23 amends section 1 of the Firearms Act 1925 to provide that a defective blank firing gun is included in the definition of a firearm. Section 23 also provides for definitions of “prohibited ammunition” and “prohibited firearm”.

Section 24 (Amendment to section 2 of Principal Act)

Section 24 amends section 2 of the Firearms Act 1925 to provide that a Superintendent of any district may authorise the possession, use or carriage of a blank firing firearm or blank ammunition, without a firearm certificate, as he deems appropriate e.g. for the training of gun dogs.

Section 25 (New section 2C of Principal Act)

Section 25 inserts a new section 2C into the Firearms Act 1925 to provide that the Minister may by order prohibit certain firearms in accordance with specified criteria.

Section 26 (Amendment to section 3 of Principal Act)

Section 26 amends section 3 of the Firearms Act 1925 to provide for a transition period where existing firearm certificates due to fall due for renewal on 31 July 2009 will have their durations extended for periods of up to 12 months. This section will allow for the introduction of 3 year licensing under section 30 of the Criminal Justice Act 2006 with licences expiring throughout the year rather than all expiring on 31 July as is now the case.

Section 27 (Amendment to section 3A of Principal Act)

Section 3A, as inserted by section 31 of the Criminal Justice Act 2006, of the Firearms Act 1925 provides that the Commissioner may issue guidelines on the practical application of the Firearms Acts. This section 27 now amends section 3A to allow the Minister to also issue guidelines on matters appropriate to his role.

Section 28 (New sections 3B, 3C and 3D of Principal Act)

Section 28 inserts three new sections, 3B to 3D, into the Firearms Act 1925. The new sections 3B and 3C provide for the outsourcing of fees for firearms certificates, formerly collected by the Garda Síochána. The new Section 3D provides, with limited exceptions, that no new firearm certificates shall be granted for short firearms.

Section 29 (New section 4C of Principal Act)

Section 29 aims to ban a form of target shooting known as practical shooting which has its roots in the use of firearms for self defence and is akin to police and military tactical training. The limit of 16 joules in subsection (2) is set to ensure that the sport of paintball remains unaffected.

Section 30 (New section 9A of Principal Act)

Section 30 inserts a new section into the Firearms Act 1925, a general compliance measure, to provide that those wishing to be entered or renewed in the register of firearms dealers shall provide a valid tax clearance certificate.

Section 31 (New section 17 of Principal Act) and Section 33 (Repeal of section 21 of Act of 1964)

Section 31 substitutes a new section for section 17 of the Firearms Act 1925 to provide that firearms may only be imported into the State via a registered firearms dealer. The repeal of section 21 of the 1964 Act is consequent on the new section 17.

Section 32 (Amendment to section 9 of Act of 1964)

Section 32 amends section 9 of the Firearms Act 1964 to delete the reference to an application for renewal of a firearm certificate

being accompanied by the prescribed fee. This is a technical amendment to remove cash transactions from Garda Stations and to allow for the outsourcing of renewal fees for firearms certificates.

Section 34 (Amendment to section 9 of Act of 1990)

Section 9(7)(a) of the Firearms and Offensive Weapons Act 1990 provides for a summary offence where a person carries any knife or any other article which has a blade or which is sharply pointed in a public place. This section 34 extends Section 9(7)(a) to allow for a person to be convicted on indictment and provides for a penalty of up to 5 years for such an offence.

New sections 9A to 9H of Act of 1990

Section 35 inserts eight new sections, 9A to 9H, into the Firearms and Offensive Weapons Act 1990 to provide control measures for realistic imitation firearms (including devices known as airsoft).

The new section 9A makes it an offence for a person, without lawful authority or reasonable excuse, to possess a realistic imitation firearm in a public place and sets penalties for such an offence. A “realistic imitation firearm” is defined as a device that appears to the ordinary observer so realistic as to make it indistinguishable from a firearm.

The new section 9B provides for the control of the use of realistic imitation firearms such as airsoft devices by restricting their use to places authorised by the local Superintendent- e.g. airsoft venues, theatres etc.

The new section 9C provides for the regulation of dealers in realistic imitation firearms. It provides that the Minister shall maintain a register of dealers in such devices. In deciding on applications for inclusion on the register, the Minister shall have regard to the character of the applicant, and generally to the public safety and the preservation of the peace. The section also provides for minimum standards to be set by regulation for dealers’ premises.

The new section 9D makes it an offence for a person to trade in realistic imitation firearms or to import such devices unless such person is registered in the register of dealers in realistic imitation firearms.

The new section 9E provides for the circumstances in which the name of a dealer in realistic imitation firearms may be removed from the Minister’s register.

The new section 9F gives powers to the Garda Síochána to inspect the stock of dealers in realistic imitation firearms.

The new section 9G allows the Minister, by Order, to set a date or dates after which the trade in realistic imitation firearms shall be prohibited. Such a power may be required if sections 9A to 9F do not provide the required public safety and security controls.

The new section 9H allows the Minister to make an Order regarding the specifications of imitation firearms. It is envisaged that such an Order, (if deemed necessary), would relate to colour so that imitation firearms would appear unrealistic.

Section 36 (Amendment to section 16 of Act of 1990)

Section 36 amends Section 16 of the Firearms and Offensive Weapons Act 1990 to allow a member of the Garda Síochána to

search a person if he suspects with reasonable cause that the person has a knife or a realistic imitation firearm with him in a public place. Section 16, as it stands, only allows such a power where a number of people are congregated in a public place and a breach of the peace is occurring.

Section 37 (Amendment to section 2 of Act of 2000)

Section 37 amends section 2 of the Act of 2000 to provide that firearms certificates granted to non-residents shall no longer expire on the 31st day of July each year but instead will be valid for one year from the date on which they are granted.

Section 38 (Amendment to section 30 of Act of 2006)

Section 38 substitutes a new section for section 30 of the Act of 2006. It provides, inter alia, that firearm certificates, other than those provided for under the transitional provisions of section 26 of the Criminal Justice (Miscellaneous Provisions) Act 2009, shall have a duration of 3 years, unless revoked.

Section 39 (Repeal of Section 40 of Act of 2006)

Section 39 repeals Section 40 of the Criminal Justice Act 2006. It provided for the reloading of ammunition and remains uncommenced. This issue will be addressed in forthcoming explosives legislation.

Part 5

Deals with a variety of technical amendments to existing statutes.

PART 5 MISCELLANEOUS
(Sections 40 to 45)

Section 40 Amends section 2 of the Summary Jurisdiction Act 1857

This section amends section 2 of the Act (as extended by section 51 of the Courts Supplemental Provisions Act 1961) to allow the Rules of Court to provide for a longer period for a district court judge to state a case after being requested to do so.

Section 41 provides a new section 2A to the Summary Jurisdiction Act 1857 as extended by the Courts Supplemental Provisions Act 1961 setting out the procedure to be followed in serving the relevant documents to any other parties involved in an appeal by way of a case stated.

Section 42 amends the Criminal Justice Act 1984 to allow for staff of the Garda Technical Bureau to certify that material which is being referred to in Court is the result of work carried out by the Garda Technical Bureau is sufficient evidence of the facts stated thereby obviating the need for Garda Technical Bureau staff to give oral evidence in court of such matters in every circumstance.

Section 43 (Amendment of Bail Act 1997)

This section amends sections 5 and 9 of the Act and also amends the schedule to the Act.

The amendment to section 5 is for the purpose of clarifying that any moneys paid under a recognisance to a prison governor or other person specified in section 22(3) of the Criminal Procedure Act 1967 for transmission to the court shall be deemed to be a payment into court for the purposes of section 5 of the 1997 Act and section 22 of the 1967 Act.

Section 9 is substituted in full. The purpose of the substitution is, in part, to improve the drafting of the section and in this regard the content of subsections (1) and (2) have been combined in subsection (1) with consequential renumbering of subsections. Subsection (12) (previously subsection (13)) has been extended to apply to sureties who fail to comply with an estreatment order or a variation of such an order, in addition to the accused person who fails to comply with such orders.

A number of offences are added to the schedule to the Bail Act.

Section 44 (Amendment to section 15 of the Act of 2001)

This section amends section 15 of the Theft and Fraud Offences Act 2001 by inserting an additional offence — a person commits an offence if he or she is in possession, without lawful authority or reasonable excuse, of any article made or adapted for use, in the course of or in connection with, the commission of a number of the offences under the 2001 Act including theft and burglary. The amendment also inserts a defence for a person charged with the offence concerned.

Section 45 amends section 39 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

*Department of Justice, Equality and Law Reform,
May, 2009.*