

Number 29 *of* 2004

MARITIME SECURITY ACT 2004

REVISED

Updated to 22 November 2021

This Revised Act is an administrative consolidation of the *Maritime Security Act 2004*. 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 *Child and Family Agency (Amendment) Act 2021* (34/2021), enacted 24 November 2021, and all statutory instruments up to and including the *Maritime Jurisdiction Act 2021 (Commencement) Order 2021* (S.I. No. 601 of 2021), made 17 November 2021, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 29 *of* 2004

MARITIME SECURITY ACT 2004

REVISED

Updated to 22 November 2021

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Offences.
3. Extra-territorial jurisdiction.
4. Power of arrest and detention.
5. Delivery of detained person to authorities in Convention state.
6. Search.
7. Proceedings.
8. Evidence.
9. Double jeopardy.
10. Amendment of Criminal Procedure Act 1967.
11. Amendment of Extradition (Amendment) Act 1994.
12. Amendment of Bail Act 1997.
13. Expenses.
14. Short title.

SCHEDULE 1

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, DONE AT ROME ON 10 MARCH 1988

SCHEDULE 2

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, DONE AT ROME ON 10 MARCH 1988

ACTS REFERRED TO

Bail Act 1997	1997, No. 16
Continental Shelf Act 1968	1968, No. 14
Criminal Justice (Safety of United Nations Workers) Act 2000	2000, No. 16

Criminal Procedure Act 1967	1967, No. 12
European Arrest Warrant Act 2003	2003, No. 45
Extradition Act 1965	1965, No. 17
Extradition (Amendment) Act 1994	1994, No. 6
Extradition Acts 1965 to 2001	
Mercantile Marine Act 1955	1955, No. 29

Number 29 *of* 2004

MARITIME SECURITY ACT 2004

REVISED

Updated to 22 November 2021

AN ACT TO GIVE EFFECT TO THE UNITED NATIONS CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, DONE AT ROME ON 10 MARCH 1988, AND TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, DONE AT ROME ON THAT DATE. [19*th July* 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1. —(1) In this Act, unless the context otherwise requires—

"act" includes omission and a reference to doing an act includes a reference to making an omission;

"Convention" means the Convention for the suppression of unlawful acts against the safety of maritime navigation, done at Rome on 10 March 1988;

"Convention state" means a state (other than the State) which is a state party to the Convention or Protocol;

"fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes and located within an area designated under F1**[**the Maritime Jurisdiction Act 2021**]**;

"Irish ship" means a ship, as so defined in section 9 of the Mercantile Marine Act 1955, wherever situate;

"master", in relation to a ship, means the person having for the time being the command or charge of the ship;

"Protocol" means the Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf, done at Rome on 10 March 1988;

"ship" means a vessel of any type not permanently attached to the sea-bed, including dynamically supported craft, submersibles or any other floating craft, but does not include—

(*a*) a warship,

(*b*) a ship owned or operated by a state when being used as a naval auxiliary or for customs or police purposes, or

(*c*) a ship which has been withdrawn from navigation or laid up,

and, in relation to a ship which is not an Irish ship, means such a ship which is in the territorial seas of the State.

(2) References in this Act to a member of the Defence Forces are references to such a member acting at the request of a member of the Garda Síochána not below the rank of inspector.

(3) For convenience of reference the texts of the Convention and Protocol in the English language are set out in *Schedules 1* and *2*.

(4) In this Act—

(*a*) a reference to a section or Schedule is to a section of, or Schedule to, this Act,

(*b*) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, and

(*c*) a reference to any other enactment is to that enactment as amended by or under any other enactment (including this Act).

Annotations

Amendments:

F1 Substituted (22.11.2021) by *Maritime Jurisdiction Act 2021* (28/2021), sch. 2, item 31, S.I. No. 601 of 2021, art 2.

F2 Substituted by *Merchant Shipping (Registration of Ships) Act 2014* (43/2014), s. 68 and sch. 4, not commenced as of date of revision.

Modifications (not altering text):

C1 Prospective affecting provision: definition of ship substituted by *Merchant Shipping (Registration of Ships) Act 2014* (43/2014), s. 68 and sch. 4, not commenced as of date of revision.

F2**[**"Irish ship" means an Irish ship within the meaning of section 33 of the Merchant Shipping (Registration of Ships) Act 2014, wherever situate;**]**

Offences.

2. —(1) A person who unlawfully and intentionally does any of the following acts is guilty of an offence:

(*a*) seizing or exercising control over a ship or fixed platform by force or threat of force or any other form of intimidation;

(*b*) performing an act of violence against a person on board a ship or fixed platform if that act is likely to endanger the safe navigation of the ship or the safety of the fixed platform;

(*c*) destroying a ship or fixed platform;

(*d*) causing damage—

(i) to a ship or its cargo which is likely to endanger its safe navigation, or

(ii) to a fixed platform which is likely to endanger its safety;

(*e*) placing or causing to be placed on a ship or fixed platform, by any means, a device or substance which is likely to—

(i) destroy the ship or fixed platform, or

(ii) cause the damage referred to in *paragraph (d)*;

(*f*) destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation, if the destruction, damage or interference is likely to endanger the safe navigation of a ship;

(*g*) endangering the safe navigation of a ship by communicating information which the person knows to be false;

(*h*) injuring or killing any person in connection with doing any of the acts mentioned elsewhere in this subsection;

(*i*) with the aim of compelling a person to do or not to do any act, threatening to endanger the safe navigation of a ship by doing any of the acts mentioned elsewhere in this subsection;

(*j*) attempting to do any of the acts mentioned in this subsection.

(2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

Annotations

Editorial Notes:

E1 Offence under subs. (1) defined as relevant offence for purposes of double jeopardy in relation to retrial and approval of District Court for exercise of certain powers relating to persons acquitted of relevant offences (1.09.2010) by *Criminal Procedure Act 2010* (27/2010), ss. 7, 8-14, 15-18, S.I. No. 414 of 2010.

Extra-territorial jurisdiction.

3. —(1) *Section 2(1)* applies to an act done outside the State in relation to a ship or a fixed platform if it is done—

(*a*) by any person on board or against an Irish ship,

(*b*) by a citizen of Ireland on board or against a ship (other than an Irish ship) or a fixed platform, or

(*c*) subject to *subsection (2)*, by a person who is not a citizen of Ireland on board or against a ship (other than an Irish ship) or a fixed platform.

(2) In the case of an act done in the circumstances mentioned in *subsection (1)(c)*, the Director of Public Prosecutions may not take, or consent to the taking of, proceedings for an offence in respect of that act except as authorised by *section 7(4)*.

(3) In this section—

"fixed platform" and "ship" mean a fixed platform and ship which are outside the State;

"outside the State" means—

(*a*) in relation to a fixed platform, outside an area designated under F3**[**the Maritime Jurisdiction Act 2021**]**, and

(*b*) in relation to a ship, outside the F3**[**territorial sea**]** of the State.

Annotations

Amendments:

F3 Substituted (22.11.2021) by *Maritime Jurisdiction Act 2021* (28/2021), s. 20(3) and sch. 2 item 32, S.I. No. 601 of 2021, art 2.

Power of arrest and detention.

4. —(1) A member of the Garda Síochána or Defence Forces may arrest without warrant anyone whom the member, with reasonable cause, suspects to be guilty of an offence under *section 2* .

(2) Where a member of the Garda Síochána or Defence Forces suspects, with reasonable cause, that a person who is about to board, or is on board, a ship or fixed platform intends to commit an offence under *section 2* on or in relation to that ship or fixed platform, the member may—

(*a*) prevent the person from boarding the ship or fixed platform or from travelling on board the ship,

(*b*) without warrant board the ship or fixed platform and remove the person from it, or

(*c*) without warrant arrest the person.

(3) The master of a ship or a person for the time being in charge of a fixed platform may arrest and detain any person whom he or she, with reasonable cause, believes to be guilty of an offence under *section 2* .

(4) Such a person may be so detained only until he or she can be delivered to—

(*a*) a member of the Garda Síochána or Defence Forces, or

(*b*) the appropriate authorities of a Convention state.

(5) A person arrested by or delivered to a member of the Defence Forces under this section shall be delivered by him or her to a member of the Garda Síochána as soon as practicable and shall thereupon be treated as a person arrested without warrant by a member of the Garda Síochána unless the person is brought as soon as practicable after such delivery before a judge of the High Court under the Extradition Acts 1965 to 2001 or the European Arrest Warrant Act 2003.

(6) In accordance with Article 7.1 of the Convention a judge of a court before whom such a person is brought shall, in considering any application for bail, take into account the need to ensure the person's presence in the State for such time as is necessary to enable any proceedings against the person to be instituted, including proceedings under any of the enactments referred to in *subsection (5)*.

(7) In considering a request for the surrender of such a person to a Convention state the High Court shall, in accordance with Article 11.6 of the Convention, pay due regard to whether the person's rights as set out in Article 7.3 thereof can be given effect to in that state.

(8) References in this section to Articles 7.1, 7.3 and 11.6 of the Convention are to be construed, as appropriate, as references to those provisions as applied by Article 1 of the Protocol.

(9) A master of a ship or person for the time being in charge of a fixed platform is not liable to—

(*a*) conviction in any criminal prosecution, or

(*b*) damages in any civil proceeding,

brought in respect of any action reasonably taken by either of them under this Act against any other person.

Delivery of detained person to authorities in Convention state.

5. —(1) A master of a ship may deliver to the appropriate authorities of a Convention state any person detained by him or her under *section 4* .

(2) A master of a ship who intends so to deliver such a person shall notify the authorities concerned of his or her intention to do so and the reasons for such delivery.

(3) The notification must be given whenever practicable and, if possible, before the ship enters the territorial seas of the Convention state.

(4) On delivery of a person under *subsection (1)* the master shall—

(*a*) make to the appropriate authorities of the Convention state such oral or written statements relating to the alleged offence as they may reasonably require, and

(*b*) give them any other evidence in his or her possession relating to that offence.

(5) A master who, without reasonable excuse, does not comply with *subsection (3)* or *(4)* is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

Search.

6. —(1) A member of the Garda Síochána or Defence Forces may search without warrant a ship or fixed platform on which the member, with reasonable cause, believes—

(*a*) that an offence under *section 2* has been committed, or

(*b*) that a person who has committed such an offence is on the ship or fixed platform,

and may—

(i) remove any object which the member believes is related to such an offence, and

(ii) remove or take copies of any records or extracts from records which may be so related.

(2) A person who obstructs or attempts to obstruct a member of the Garda Síochána or Defence Forces while searching a ship or fixed platform is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(3) Such a member may arrest without warrant any person who is committing an offence under *subsection (2)*.

(4) In *subsection (1)(ii)* "records" includes information in nonlegible form which is capable of being converted into legible form.

Proceedings.

7. —(1) Proceedings for an offence under *section 2* in respect of an act done outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

(2) Such an offence shall be tried by the Central Criminal Court.

(3) Where a person is charged with such an offence, no further proceedings in the matter (other than a remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.

(4) The Director of Public Prosecutions may take, or consent to the taking of, further proceedings against a person for such an offence—

(*a*) if it is done in the circumstances mentioned in *paragraph (a)* or *(b)* of *section 3(1)*, or

(*b*) if it is done in the circumstances mentioned in *section 3(1)(c)* and the Director is satisfied—

(i) in case a request for the person's surrender for the purpose of trying him or her for such an offence has been made by a Convention state under Part II of the Extradition Act 1965, that the request has been finally refused (whether as a result of a decision of a court or otherwise),

(ii) in case a F4**[**relevant arrest warrant**]** has been received for the person's arrest for the purpose of bringing proceedings against him or her for such an offence in a Convention state that is a F4**[**Member State (within the meaning of the European Arrest Warrant Act 2003)**]**, that a final determination has been made under the European Arrest Warrant Act 2003, whether by refusal of the High Court to endorse the warrant or otherwise under that Act, that the person should not be surrendered to the state concerned, or

(iii) in any other case, that, because of special circumstances (including, but not limited to, the likelihood of the person not being surrendered in the circumstances mentioned in *subparagraph (i)* or *(ii)*), it is expedient that proceedings be taken against the person for such an offence.

(5) In *subsection (4)(b)(ii)* F4**[**"relevant arrest warrant"**]** has the meaning given to it by section 2(1) of the European Arrest Warrant Act 2003.

Annotations

Amendments:

F4 Substituted (30.03.2021) by *European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021* (S.I. No. 150 of 2021), reg. 45(a)(i), (ii), (b), in effect as per reg. 1(2).

Evidence.

8. —(1) In any proceedings relating to an offence under *section 2* a certificate purporting to be signed by an officer of the Department of Foreign Affairs and certifying that—

(*a*) a passport was issued by the Department to a specified person on a specified date, and

(*b*) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is admissible in any proceedings, without further proof, as evidence that the person was an Irish citizen on the date on which the offence under *section 2* with which the person is charged was committed, unless the contrary is shown.

(2) A certificate purporting to be signed by the Director of Public Prosecutions or by a person authorised by the Director in that behalf and stating any of the matters specified in *paragraph (a)* or *(b)* of *section 7(4)* is evidence of the facts stated in the certificate, unless the contrary is shown.

(3) A document purporting to be a certificate under *subsection (1)* or *(2)* is deemed, unless the contrary is shown—

(*a*) to be such a certificate,

(*b*) to have been signed by the person purporting to have signed it, and

(*c*) in the case of a certificate under *subsection (2)* purporting to be signed by a person authorised by the Director of Public Prosecutions in that behalf, to have been signed by such a person.

Double jeopardy.

9. —A person who has been acquitted or convicted of an offence outside the State shall not be proceeded against for an offence under *section 2* for the act which constituted the offence of which the person was acquitted or convicted.

Amendment of Criminal Procedure Act 1967.

10. — The Criminal Procedure Act 1967 is amended—

(*a*) in section 13(1), by inserting "or the offence of killing or attempted killing under *paragraph (h)* or *(j)* of *section 2(1)* of the *Maritime Security Act 2004* " after "the offence of murder under section 2 of the Criminal Justice (Safety of United Nations Workers) Act 2000, or an attempt or conspiracy to commit that offence," (inserted by section 7 of the said Act of 2000), and

(*b*) in section 29(1), by inserting the following paragraph after paragraph (*i*) (inserted by the said section 7):

"(*j*) the offence of killing or attempted killing under *paragraph (h)* or *(j)* of *section 2(1)* of the *Maritime Security Act 2004*.".

Amendment of Extradition (Amendment) Act 1994.

11. —The First Schedule to the Extradition (Amendment) Act 1994 is amended by adding the following after paragraph 14:

" *Maritime security offences*

14A. Any offence under *section 2* of the *Maritime Security Act 2004*.".

Amendment of Bail Act 1997.

12. —The Schedule to the Bail Act 1997 is amended by inserting the following after paragraph 22:

" *Maritime security offences*

22A.—Any offence under *section 2* of the *Maritime Security Act 2004*.".

Expenses.

13. —The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title.

14. —This Act may be cited as the Maritime Security Act 2004.

Section 1 .

SCHEDULE 1

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, DONE AT ROME ON 10 MARCH 1988

The States Parties to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights [1] and the International Covenant on Civil and Political Rights. [2]

DEEPLY CONCERNED about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

RECALLING resolution 40/61 [3] of the General Assembly of the United Nations of 9 December 1985 which, *inter alia*, "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

RECALLING FURTHER that resolution 40/61 "unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

HAVING IN MIND resolution A.584(14) [1] of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

[1] United Nations, *Official Records of the General Assembly, Third Session*, Part I, p. 71.
[2] United Nations, *Treaty Series*, vol. 999, p. 171; vol 1057, p. 407 (rectification of authentic Spanish text); vol. 1059, p. 451 (corrigendum to vol. 999).
[3] United Nations, *Official Records of the General Assembly, Fortieth Session*, Supplement 53 (A/40/53), p. 301.
[1] International Maritime Organization, *Resolutions and Other Decisions, Assembly, Fourteenth Session*, 11-22 November 1985, p. 152.

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

RECOGNIZING the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1. This Convention does not apply to:

(*a*) a warship; or

(*b*) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or

(*c*) a ship which has been withdrawn from navigation or laid up.

2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1. Any person commits an offence if that person unlawfully and intentionally:

(*a*) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or

(*b*) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

(*c*) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or

(*d*) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

(*e*) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

(*f*) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

(*g*) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (*a*) to (*f*).

2. Any person also commits an offence if that person:

(*a*) attempts to commit any of the offences set forth in paragraph 1; or

(*b*) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(*c*) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (*b*), (*c*) and (*e*), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2. In cases where the convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:

(*a*) against or on board a ship flying the flag of the State at the time the offence is committed; or

(*b*) in the territory of that State, including its territorial sea; or

(*c*) by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(*a*) it is committed by a stateless person whose habitual residence is in that State; or

(*b*) during its commission a national of that State is seized, threatened, injured or killed; or

(*c*) it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(*a*) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(*b*) be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1. The master of a ship of a State Party (the "flag state") may deliver to the authorities of any other State Party (the "receiving State") any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reason for refusal.

4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 6 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

(*a*) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;

(*b*) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:

(*a*) the circumstances of the offence;

(*b*) the action taken pursuant to article 13, paragraph 2;

(*c*) the measure taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.

3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(*a*) signature without reservation as to ratification, acceptance or approval; or

(*b*) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(*c*) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1. This Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(*a*) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;

(iv) the receipt of any declaration or notification made under this Convention;

(*b*) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

[Here follow signatures on behalf of certain States]

Section 1 .

SCHEDULE 2

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, DONE AT ROME ON 10 MARCH 1988

The States Parties to this Protocol,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,

RECOGNIZING that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

TAKING ACCOUNT of the provisions of the Convention,

AFFIRMING that matters not regulated by this Protocol continue to be governed by the rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

1. The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the Convention") shall also apply *mutatis mutandis* to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

2. In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.

3. For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

ARTICLE 2

1. Any person commits an offence if that person unlawfully and intentionally:

(*a*) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or

(*b*) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or

(*c*) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or

(*d*) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or

(*e*) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (*a*) to (*d*).

2. Any person also commits an offence if that person:

(*a*) attempts to commit any of the offences set forth in paragraph 1; or

(*b*) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(*c*) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (*b*) and (*c*), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:

(*a*) against or on board a fixed platform while it is lcoated on the continental shelf of that State; or

(*b*) by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(*a*) it is committed by a stateless person whose habitual residence is in that State;

(*b*) during its commission a national of that State is seized, threatened, injured or killed; or

(*c*) it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 and 2 of this article.

5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

ARTICLE 5

1. This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

(*a*) signature without reservation as to ratification, acceptance or approval; or

(*b*) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(*c*) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 6

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 7

1. This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of dencunciation, after the receipt of the instrument of denunciation by the Secretary-General.

4. A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

ARTICLE 8

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 9

1. This Protocol shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(*a*) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

(iv) the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;

(*c*) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.

3. As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

[Here follow signatures on behalf of certain States]

MARITIME SECURITY ACT 2004

EXPLANATORY AND FINANCIAL MEMORANDUM

[*This Memorandum is not part of the Act and does not purport to be a legal interpretation.*]

Introduction

The purpose of this Act is to give effect to the **United Nations Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)** and the **Protocol** to that Convention **for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf (1988)**, the text of which was laid before Dáil Éireann and Seanad Éireann on 11 November 2003 and is set out in *Schedules 1* and *2* to the Act.

The Convention and Protocol are among a suite of international instruments against terrorism which Member States of the United Nations are enjoined by Security Council Resolution 1373 of 28 September 2001 to implement as soon as possible. **The terms of the Convention and Protocol were approved by Dáil Éireann pursuant to Article 29.5.2° of Bunreacht na hÉireann on 25 May 2004** and the Act was enacted to enable Ireland to be a party to them.

The Act creates specific offences against the safety of Irish ships and other ships which are in Irish territorial waters and against fixed platforms on the Continental Shelf (subject to imprisonment for life on conviction on indictment), and consequentially provides, on standard lines, for extra-territorial jurisdiction to cover offences committed outside the State in breach of the Convention or Protocol, the apprehension and detention of alleged offenders and handing them over to the appropriate authorities, extradition, bail, avoidance of double jeopardy and other necessary matters, on the model of provisions of the Criminal Justice (Terrorist Offences) Bill 2002 which makes necessary provision in relation to 4 other international conventions against terrorism.

Provisions of Act

Section 1 provides, on standard lines, for the definition of certain terms and expressions used in the Act.

Subsection (2) makes its clear that any Defence Forces' involvement under the Act is only to be in aid of the civil power, at the request of a member of the Garda Síochána of at least Inspector rank.

Section 2 gives effect to Article 3.1 of the Convention and Article 2.1 of the Protocol by outlawing specified acts which are mentioned therein (*subsection (1)*), and also to Article 5 of the Convention (which applies *mutatis mutandis* to the acts outlawed by the Protocol) by prescribing a penalty of imprisonment for life on conviction on indictment for doing any such acts (*subsection (2)*).

Both the 1988 Convention and Protocol thereto outlaw "aiding or abetting" the commission of unlawful acts specified therein. Section 7 of the Criminal Law Act 1997 (No 14) provides that any person who aids, abets, counsels or procures the commission of an indictable offence (such as those provided for in this section) is liable to be indicted, tried and punished as a principal offender. There is therefore no need to make separate provision for those acts in this section.

Section 3 is designed to prevent offenders escaping jurisdiction by giving *section 2* of the Act extra-territorial application.

Subsection (1) **extends** ***section 2*** **of the Bill to cover unlawful acts done outside the State by any person on board or against an Irish ship, or by a citizen of Ireland on or against any non-Irish ship or fixed platform, or by a person who is not a citizen of Ireland but is found in the State.**

Subsection (2) **restricts the Director of Public Prosecutions in consenting to or taking court proceedings in relation to unlawful acts done outside the State — on or against non-Irish ships or fixed platforms — by a person who is not a citizen of Ireland but is found in the State.**

Subsection (3) **defines "outside the State" for the purposes of this section as meaning outside the territorial seas of the State (as defined by the Maritime Jurisdiction Acts 1959 to 1988) or outside an area designated under section 2 of the Continental Shelf Act 1968 (No. 18).**

Section 4 makes provision for the arrest of alleged offenders and their detention until they can be duly brought before a court in the State or handed over to the appropriate authorities of another Convention state.

Subsection (1) empowers a member of the Garda Síochána (or a member of the Defence Forces acting in aid of the civil power) to arrest an alleged offender without warrant.

Subsection (2) supplements *subsection (1)* by empowering a member of the Garda Síochána (or a member of the Defence Forces acting in aid of the civil power) to prevent a suspected intending offender from boarding a ship or fixed platform or remove that person from the ship or fixed platform or arrest that person without warrant.

Subsection (3) mirrors *subsection (1)* by empowering the master of the ship concerned or person in charge of the fixed platform concerned to arrest and detain an alleged offender until such time (as required by *subsection (4)*) as the alleged offender can be delivered to a member of the Garda Síochána or Defence Forces, or to the appropriate authorities of another Convention state.

Subsection (5) requires the delivery to a member of the Garda Síochána of any alleged offender delivered to a member of the Defence Forces under *subsection (4)* **or arrested by a member of the Defence Forces under this section.**

Subsections (6), (7) and *(8)* give effect to particular requirements of the Convention (Articles 7.1, 7.3 and 11.6) and Protocol (Article 1.1 which applies the said Articles of the Convention *mutatis mutandis* to the Protocol).

Subsection (6) ensures that the court before which an alleged offender is brought shall, when considering an application for bail, take into account the need to ensure the person's presence in the State for such time as is necessary to enable any extradition or other proceedings to be brought.

Subsection (7) obliges the court to pay due regard to whether the rights of the person in question can be given effect to in the state requesting the extradition of that person, namely, the right to

(*a*) communicate without delay with the nearest appropriate representative of the state of which that person is a national or which is otherwise entitled to establish such communication or, if that person is a stateless person, the state in the territory of which that person has his or her habitual residence, and

(*b*) be visited by a representative of that state.

Subsection (8) makes it clear that *subsections (6)* and *(7)* apply *mutatis mutandis* to the Protocol as they apply to the Convention.

Subsection (9) is a necessary exemption from any liability for any master of a ship or person in charge of a fixed platform who acts in a reasonable way under this Act.

Section 5 makes provision in relation to the handing over by the master of a ship to the appropriate authorities of another Convention state of persons detained under *section 4* of the Act.

Subsection (1) is the main provision. It authorises the master of the ship in question to deliver to the appropriate authorities of another Convention state an alleged offender detained under *section 4* of the Act. The remainder of the section elaborates on requirements to be observed by such a master in such cases.

Subsection (2) requires the master of the ship concerned to notify the appropriate authorities of the Convention state in question of the intended handing-over of the alleged offender and the reasons for so doing while

Subsection (3) requires that notification to be given as soon as it is practicable to do so and, if possible, before the ship in question enters the territorial seas of the Convention state in question.

Subsection (4) requires the master of the ship in question to provide the appropriate authorities of the Convention state in question with any relevant statements they may reasonably require and such other evidence as the master of the ship in question may possess in relation to the alleged offence.

Subsection (5) is designed to ensure that the master of the ship concerned meets the requirements of *subsections (3)* and *(4)*, except where it is not reasonable to do so, by making unreasonable failure by the master of the ship concerned an offence subject to the potentially severe penalties set out in *subsection (5)*.

Section 6 clearly provides for the search by a member of the Garda Síochána (or member of the Defence Forces in aid of the civil power) of any ship or fixed platform on which it is alleged that an offence under this Act has been committed, or on which there is a person who is alleged to have committed such an offence.

Subsection (1) is the main provision. It provides for search by a member of the Garda Síochána (or member of the Defence Forces in aid of the civil power) of such a ship or fixed platform and for the removal of any object or records related to the alleged offence.

Subsection (2) outlaws obstruction of a search authorised by *subsection (1)* by making such obstruction an offence subject to a fine not exceeding **€3,000** and/or imprisonment for a term not exceeding **12** months.

Subsection (3) empowers the arrest without warrant of any person who obstructs a search under *subsection (1)*.

Subsection (4) ensures that electronically-held information capable of being converted into legible form can be obtained by search under this section.

Section 7 makes provision for court proceedings in the State under this Act for alleged offences committed outside the State.

Subsection (1) provides that court proceedings for such offences may be brought anywhere in the State.

Subsection (2) appoints the Central Criminal Court as the court to try any offences under *section 2* of the Act (as extended by *section 3* of the Act), because of the gravity of such offences.

Subsection (3) makes it clear that it is for the Director of Public Prosecutions to determine what if any further proceedings (that is in addition to remand in custody or on bail) are to be brought in the State against persons alleged to have committed an offence outside the State, subject to *subsection (4)*.

Subsection (4) allows the Director of Public Prosecutions to take, or consent to the taking of, further proceedings in the State against a person for an offence in respect of an act done outside the State where, for example, extradition of the alleged offender to another Convention state was refused or is likely to be refused, or because of special circumstances it is considered expedient to bring court proceedings in the State against the alleged offender.

Subsection (5) defines "European Arrest Warrant" for the purposes of this section.

Section 8 ensures the admissibility of certain official certificates in court proceedings in the State for offences under *section 2* of the Act (as extended by *section 3* of the Act). A certificate issued by an officer of the Department of Foreign Affairs could state if an Irish passport issued to a specified person on a specified date and that that person was believed to continue to be an Irish citizen. A certificate signed by or on behalf of the Director of Public Prosecutions would relate to any act committed outside the State in respect of which court proceedings in the State are brought by or with the consent of the Director of Public Prosecutions, because extradition of the alleged offender to another Convention state was refused or is likely to be refused, or because it is considered expedient to bring court proceedings in the State against the alleged offender in respect of an act committed outside the State.

Section 9 is designed to ensure that, in so far as the State is concerned, where a person has been acquitted or convicted outside the State of an offence for doing any act specified in *section 2* of the Act (as extended by *section 3* of the Act), that person cannot be proceeded against for the corresponding offence in the State also.

Section 10 provides that a person charged with the offence of murder or attempted murder contrary to *section 2* of the Act (as extended by *section 3* of the Act) may not, on a plea of guilty, be dealt with summarily in the District Court or sent forward for sentence, and that in such cases applications for bail must go to the High Court.

Section 11 ensures that, for extradition purposes, offences under *section 2* of the Act (as extended by *section 3* of the Act) will not be regarded as political offences.

Section 12 ensures that offences under *section 2* of the Act (as extended by *section 3* of the Act) will be considered to be serious offences for bail purposes. The Bail Act 1997 (No. 16) provides that bail may be refused to a person charged with a serious offence where it is considered necessary to prevent the commission of a serious offence. Serious offences are defined by reference to the Schedule to that Act which *section 12* of this Act amends to include offences under *section 2* of this Act (as extended by *section 3* of this Act).

Section 13 is a standard provision for Exchequer funding of any expenses incurred in administering the Act.

Section 14 is a standard provision giving the short title of the Act, for ease of reference.

Financial Implications

Exchequer expenditure could arise from mutual assistance, extradition of alleged offenders and other requirements of the 1988 Convention and Protocol. While such expenditure is unlikely to be significant, Dáil approval of the terms of the 1988 Convention and Protocol was specifically required by Article 29.5.2° of Bunreacht na hÉireann **(approval given on 25 May 2004)**, as well as enactment of this Act.

An Roinn Cumarsáide, Mara agus Acmhainní Nádúrtha, **Iúil**, 2004.

Number 29 *of* 2004

MARITIME SECURITY ACT 2004

REVISED

Updated to 22 November 2021

About this Revised Act

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

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Maritime Jurisdiction Act 2021* (28/2021)
- *Merchant Shipping (Registration of Ships) Act 2014* (43/2014)
- *Criminal Procedure Act 2010* (27/2010)

All Acts up to and including *Child and Family Agency (Amendment) Act 2021* (34/2021), enacted 24 November 2021, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021* (S.I. No. 150 of 2021)

All statutory instruments up to and including *Maritime Jurisdiction Act 2021 (Commencement) Order 2021* (S.I. No. 601 of 2021), made 17 November 2021, were considered in the preparation of this revision.