

IRELAND

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NATIONAL POLICY

Ireland shares in a world-wide determination that the forces of terrorism will not prevail and recognises that the response to the challenge of international terrorism requires concerted action and greater co-operation by the international community as well as action on the part of individual states.

Ireland seeks to uphold and protect democratic values by developing a more inclusive, intercultural society in Ireland based on policies that promote interaction, equality of opportunity, understanding and respect. At the same time Ireland is determined to deny international terrorists the means and opportunities to use this jurisdiction for planning and supporting terrorist activities and has put in place strong anti-terrorist legislation to ensure that such activities will not be tolerated while at the same time ensuring the safety and protection of fundamental freedoms and rights for all.

Ireland is fully committed to working actively in the international arena to combat terrorism, fully supporting measures taken at the United Nations, the European Union and the Council of Europe as well as other international *fora* to ensure that democratic values are protected and to promote fundamental freedoms and rights.

LEGAL FRAMEWORK

Penal law

The Offences against the State Acts 1939-1998 in combination with *The Criminal Justice (Terrorist Offences) Act 2005* contain Ireland's primary legislation against terrorism.

The Offences against the State Acts 1939-1998 provide for the offences of membership of, providing assistance to, and directing an unlawful organisation, the possession of articles for purposes connected with certain offences, the unlawful collection of information, withholding information, and training persons in the making or use of firearms, etc.

The Criminal Justice (Terrorist Offences) Act 2005 enhances the capacity of Ireland to address the problem of international terrorism and legislates for

the provisions of the International Convention against the Taking of Hostages, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Financing of Terrorism, and also provides for Ireland's compliance with the EU Council Framework Decision on Combating Terrorism.

The 2005 Act provides that terrorist groups that engage in, promote, encourage or advocate the commission of a terrorist activity are unlawful organisations within the meaning of the Offences against the State Acts 1939-1998. It incriminates terrorist offences as a separate category of crime and sets up lists of offences which, with the requisite intent, would constitute terrorist offences. Terrorist activity is defined by reference to offences under Irish law which are committed in or outside the State with the intent of seriously intimidating a population, unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political economic or social structure of a state or an international organisation. A person is guilty of an offence if the person engages in, attempts to engage in a terrorist activity or a terrorist-linked activity, or makes a threat to engage in a terrorist activity.

Under the terms of the Criminal Justice (Terrorist Offences) Act 2005, terrorist groups who commit terrorist offences in or outside the State are subject to the provisions of the Act.

The Criminal Law Act 1976 makes it an offence to recruit another person for an unlawful organisation or to incite or invite another person to join an unlawful organisation or to take part in or support its activities

Financing of Terrorism

The Criminal Justice (Terrorist Offences) Act 2005 creates an offence of financing terrorism and provides for the confiscation, freezing and forfeiture of funds used or intended for use in financing the commission of terrorist acts. It also introduces a scheme for the freezing, restraint or confiscation of funds, by means of a court order, in the possession

or control of a person that are being used or intended for use in committing, or facilitating the commission of, a terrorist offence or an offence of financing terrorism. It imposes obligations on banks and financial bodies to take certain measures to prevent and assist in the detection of an offence of financing terrorism.

There are two distinct and dedicated procedures for the purpose of freezing funds. Both procedures are court-based and build on existing provisions of Irish law. The key difference between them is that the first enables an application to be made to freeze funds intended for use in committing terrorist offences independently of criminal proceedings, whereas the second is available for use in conjunction with such proceedings in respect of the offence of financing terrorism.

Penalties

The penalty for committing a terrorist offence is determined by reference to the penalty imposable for the same offence when committed without the special intent required for terrorist offences. The penalty imposable will be the same where it is a sentence of imprisonment fixed by law or imprisonment for life. Enhanced maximum penalties are available in other cases.

Seizure and Forfeiture

There are dedicated procedures in the *Offences against the State Act 1939-1998* directed to the property and funds of organisations that have been declared unlawful organisations for the purpose of the Acts. These include a general power of forfeiture of property of an unlawful organisation as a consequence of the making of a suppression order in relation to that organisation. These Acts also contain a provision, which can be brought into operation from time to time by Government Order, under which the Minister for Justice, Equality and Law Reform may authorise restraint of funds believed to be destined for the use of an unlawful organisation. Provisions of the criminal law relating to the proceeds of crime have application to terrorist financing. *The Criminal Justice Act 1994, the Proceeds of Crime Act 1996, the Proceeds of Crime (Amendment) Act 2005* and the *Criminal Assets Bureau Act 1996* permit the confiscation of terrorist finances where these can be shown to be the proceeds of crime either directly or indirectly.

Under the *Criminal Justice (Terrorist Offences) Act 2005*, provisions are made for freezing and confiscating funds used or allocated for use in connection with the financing of terrorism, or funds that are the proceeds of such an offence. The Act provides for a dedicated procedure whereby funds used in, or deriving from, a terrorism financing offence may also be subject to confiscation, restraint

and forfeiture by way of a court order arising from proceedings for such an offence.

The Act also provides, *inter alia*, that a member of the *Gárda Síochána* (Irish national police force) or an officer of Customs and Excise can seize and detain cash which is being imported or exported into or out of the State if there are grounds for suspecting that it represents a person's proceeds of, or is intended by any person for use in connection with, an offence of financing terrorism.

Asset Freezing

UN Security Council Resolutions 1267 and 1373 freezing terrorist assets have been implemented at EU level via Common Positions and EC regulations. These measures have direct effect in Ireland and therefore the force of law relating to the freezing and withholding of funds, other financial assets and economic resources of natural or legal persons, groups or entities specified. The Central Bank is the competent authority which supervises financial institutions regarding the implementation of EC Regulations in relation to the freezing of funds.

The *Criminal Justice (Terrorist Offences) Act 2005* also gives effect to a number of requirements arising from the adoption of the UN Convention for the Suppression of the Financing of Terrorism, UNSCR 1373 and related developments at European Union level. It provides that the Minister for Finance may make regulations directed to freezing terrorist funds so that enabling acts adopted by the institutions of the European Communities for this purpose can be given full effect. It also provides for an indictable offence for breach of the regulations.

Procedural Rules

Terrorist offences may be tried before the Special Criminal Court established under the *Offences against the State Act 1939* for the trial of offences in cases where it may be determined that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. Cases which pose a threat to the security of the State and where there is a real likelihood that juries or witnesses might be interfered with are referred to this Court.

Jurisdiction

Ireland is bound by the obligations contained in international treaties to extradite or prosecute. The *Extradition Act 1965* provides that the extradition of Irish citizens to countries other than Member States of the European Union will only be permitted where reciprocal arrangements apply. Where extradition of an Irish citizen is not permitted because of the absence of such reciprocal facilities, the person may be prosecuted in Ireland. A decision in relation to the prosecution of a person for any offence in

Ireland is a matter for the Irish Director of Public Prosecutions.

Other Relevant Legislation

The Air Navigation and Transport Act 1973 (as amended) gives effect to the Convention on Offences and Certain other Offences committed on Board Aircraft, the Convention for the Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts against the Safety of Aircraft and the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Aviation.

The Maritime Security Act 2004 gives effect to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf.

The Radiological Protection Act 1991 gives effect to the Convention on the Physical Protection of Nuclear Materials

The Instrument of Accession for the Convention on the Marking of Plastic Explosives for the Purpose of Detection was deposited with the International Civil Aviation Authority in Montreal on 15 July 2003, and the Convention entered into force in Ireland on 13 September 2003.

The Extradition Acts 1965-2001 give effect to the European Convention on the Suppression of Terrorism, and the European Convention on Extradition.

The Criminal Justice Act 1994 legislates for the provisions of the European Convention on Mutual Assistance in Criminal Matters, the European Additional Protocol to the Convention on Mutual Assistance in Criminal Matters, and the European Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime.

The European Arrest Warrant Act 2003 (as amended) gives effect to the Framework Decision of 13 June 2002 on the European Arrest Warrant.

The Criminal Justice (Mutual Assistance Bill) 2005, which is expected to be enacted in 2007, will give effect, *inter alia*, to the following mutual legal assistance instruments:

- The EU Convention of 29 May 2000 on Mutual Assistance in Criminal Matters
- The Protocol to the Convention on Mutual Assistance in Criminal Matters, done at Luxembourg on 16 October 2001.

- The Second Additional Protocol of 8 November 2001 to the European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters.

Ireland has its own scheme for the compensation of victims of violent crimes. The *Scheme of Compensation for Personal Injuries Criminally Inflicted* provides *ex gratia* compensation for victims of violent crime or for those injured trying to prevent such a crime. Victims of terrorism come within the scope of this scheme.

In addition, the *Scheme for the Acknowledgement, Remembrance and Assistance for Victims in this Jurisdiction of the Conflict in Northern Ireland* has been established to give assistance to those who were injured, or to the surviving families of those killed, in this jurisdiction, or who were normally resident here at that time, in an incident relating to the conflict in Northern Ireland.

INSTITUTIONAL FRAMEWORK

The Minister for Justice, Equality and Law Reform has ministerial responsibility within Government for counter-terrorist policy in Ireland. The Department of Justice, Equality and Law Reform is responsible for bringing forward legislative measures and for counter-terrorist contingency planning.

Ireland's national police service (An Garda Síochána) acts as both the State's security service and law enforcement agency in respect of counter terrorism. Its duties include intelligence gathering associated with the prevention of terrorism and the pursuit and investigation of terrorists. The Garda Síochána is operationally independent but is subject to the general law enforcement policies set by Government.

The authority to prosecute a person for a criminal offence rests with an independent officer, the Director of Public Prosecutions.

The Central Bank is the competent authority which supervises financial institutions regarding the implementation of EC Regulations in relation to the freezing of funds.

INTERNATIONAL CO-OPERATION

Mutual Legal Assistance

Ireland is a party to the European Convention on Mutual Assistance in Criminal Matters and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

The rules governing international co-operation are contained in Part VII of the Criminal Justice Act 1994. This contains the relevant provisions enabling Ireland to provide mutual legal assistance to, and to seek mutual assistance from, other countries. Requests mainly relate to the taking of evidence in court, police to police co-operation, search and seizure and the service of judicial documents. The majority of requests, both incoming and outgoing, are made under the European Convention on Mutual Assistance in Criminal Matters.

Legislation is currently before the Irish Parliament which will give effect to seven further mutual assistance instruments. It will also give effect, *inter alia*, to the mutual legal assistance provisions of the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

This legislation will enhance and supplement existing international co-operation in the fight against terrorism and organised crime and will help to further facilitate the detection and prosecution of those responsible for transnational crime and terrorism. It is expected that the Bill will be enacted in 2007.

Extradition

The procedures for extradition are for the most part governed in Ireland by the Extradition Act 1965, the Extradition (European Convention on the Suppression of Terrorism) Act 1987, the Extradition (Amendment) Act 1987 and the Extradition (European Union Conventions Act) 2001. These are collectively referred to as the Extradition Acts. These Acts provide, *inter alia*, for Irish extradition arrangements on foot of obligations under the European Convention on Extradition 1957.

Ireland has also concluded bilateral extradition treaties with Australia and the United States of America.

Extradition arrangements with Member States of the EU are based on the European Arrest Warrant and are governed by the European Arrest Warrant Act 2003, as amended. This Act is based upon an EU Council Framework Decision and facilitates extradition between Member States.

Ireland extradites both its own nationals and foreign nationals who have been traced to Ireland. Ireland's extradition laws are applicable to terrorist related offences and to other crimes.

Measures in the European Union

Ireland is a member state of the European Union (EU). Following the terrorist attacks in Madrid on 11 March 2004 the EU accelerated its work on

combating terrorism and adopted the European Council Declaration on Combating Terrorism and a revised EU Plan of Action on Combating Terrorism. Immediately following on the terrorist attacks in London in July 2005, the EU adopted a series of new measures to further accelerate its work on combating terrorism. Ireland fully supports all measures taken at EU level aimed at combating terrorism.

The EU Council Framework Decision on Attacks against Information Systems, to which Ireland is a party, entered into force on 16 March 2005. The aim of the Framework Decision is the approximation of Member States' criminal law in order to ensure the greatest possible police and judicial cooperation in the area of attacks against information systems and to contribute to the fight against organised crime and terrorism. The national measures necessary to implement the provisions of the Framework Decision, including national legislation, are currently being examined.

In December 2005, the European Council adopted the EU counter-terrorism strategy. The strategy brings together in one succinct document the principal aims and objectives of the Union's fight against terrorism. In the strategy, the EU commits itself to oppose terrorism globally, while respecting human rights, with a view to making Europe safer and enabling its citizens to live in freedom, security and justice. The strategy tackles terrorism under four headings: "prevent, protect, pursue, respond".

The Strategy is accompanied by a Plan of Action which sets out the detailed measures and steps required to give it effect. The Plan of Action represents a roadmap for future work and, where appropriate, includes deadlines for the achievement of specified objectives and/or progress on specified measures. The Plan currently comprises some 120 separate actions and the European Council reviews progress on its implementation every six months.

Relevant bilateral agreements to which Ireland is a party are as follows:

- Agreement between the Government of Ireland and the Government of the Russian Federation on Co-operation in Combating Illicit Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances, signed at Moscow on 15 September 1999 and entered into force on 22 July 2000;
- Agreement between the Government of Ireland and the Government of the Russian Federation on Co-operation in Fighting Crime signed at Moscow on 15 September 1999 and entered into force on 22 July 2000;

- Agreement between the Government of Ireland and the Government of the Republic of Hungary on Co-operation in Combating Illicit Drug Trafficking, Money Laundering, Organised Crime, Trafficking in Persons, Terrorism and other Serious Crime, signed at Budapest on 3 November 1999 and entered into force on 17 August 2000;
- Agreement between the Government of Ireland and the Government of the Republic of Poland on Co-operation in Combating Organised Crime and other Serious Crime, signed at Warsaw on 12 May 2001 (not yet in force);
- Agreement between the Government of Ireland and the Government of the Republic of Cyprus on Co-operation in Combating Illicit Drug Trafficking, Money Laundering, Organised Crime, Trafficking in Persons, Terrorism and Other Serious Crime, signed at Dublin on 8 March 2002 and entered into force on 23 March 2006;
- Agreement between the Government of Ireland and the Government of the Republic of Bulgaria on Co-operation in Combating Illicit Trafficking in Drugs and Precursors, Money Laundering, Organised Crime, Trafficking in Persons, Terrorism and Other Serious Crime, signed at Dublin on 31 January 2002 (not yet in force).

Financial Action Task Force against Money Laundering (FATF)

The mandate of the FATF was extended in 2001 to include combating the financing of terrorism. FATF drew up and adopted nine special recommendations to combat the financing of terrorism. Ireland is a member of FATF, fully endorses the standards in the recommendations, and plays an active role in the development of FATF internationally. FATF recommendations in relation to Irish legislation on money laundering and combating terrorism are being taken on board in the context of the preparation of an Irish Anti-Money Laundering Bill which is currently underway.

United Nations Conventions on Terrorism

The work of the United Nations in the area of international counter-terrorism is fully supported by Ireland. Ireland has signed and ratified 12 United Nations Conventions related to terrorism. The preparation of enabling national legislation has commenced which will enable Ireland to give effect to the 13th UN Convention, the International Convention for the Suppression of Acts of Nuclear Terrorism

OSCE

Ireland regards the role of the OSCE in the prevention and resolution of conflicts as making an important contribution to the prevention of terrorism. Particular importance is attached by Ireland to the work of the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities and the Representative on Freedom of the Media in promoting democracy, the rule of law, and human rights. OSCE's positive contribution in these areas helps to address conditions conducive to the spread of terrorism. Ireland contributes to these goals by its participation in ODIHR election monitoring missions and by support given by Irish Aid to OSCE programmes in the areas of the rule of law, freedom of the media and work for minorities. Ireland's commitment to these goals is also evident in the seconding of Irish military and civilian personnel to OSCE field missions and to the Strategic Police Matters Unit of the OSCE Secretariat. Ireland is an active participant in all OSCE fora concerned with the problem of terrorism.

Council of Europe

Ireland is fully committed to the Council of Europe's work to combat terrorism. The list of instruments drawn up in the Council of Europe which have been signed and or ratified by Ireland is attached below. Work is currently underway in Ireland to enable the ratification of the remaining instruments.

Relevant Council of Europe conventions – Ireland	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	24/2/1986	21/2/1989
Amending Protocol (ETS 190)	15/5/2003	-
European Convention on Extradition (ETS 24)	2/5/1966	2/5/1966
First Additional Protocol (ETS 86)	-	-
Second Additional Protocol (ETS 98)	-	-
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	15/10/1996	28/11/1996
First Additional Protocol (ETS 99)	28/11/1996	28/11/1996
Second Additional Protocol (ETS 182)	8/11/2001	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	-	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	15/10/1996	28/11/1996
Convention on Cybercrime (ETS 185)	28/2/2002	-
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	-	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	-	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	-	-

