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*Number 42 of 2021*

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**Criminal Justice (Smuggling of Persons) Act 2021**

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## **CRIMINAL JUSTICE (SMUGGLING OF PERSONS) ACT 2021**

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*Number 42 of 2021*

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## **CRIMINAL JUSTICE (SMUGGLING OF PERSONS) ACT 2021**

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An Act to prevent and combat the smuggling of persons and, for those purposes, to facilitate cooperation with other states; to give effect to Council Directive 2002/90/EC of 28 November 2002<sup>1</sup> defining the facilitation of unauthorised entry, transit and residence; to give effect to Council Framework Decision 2002/946/JHA of 28 November 2002<sup>2</sup> on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence; to give effect, in part, to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000; to repeal certain provisions of the Illegal Immigrants (Trafficking) Act 2000; to amend certain other enactments; and to provide for related matters.

[15th December, 2021]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY

#### **Short title and commencement**

1. (1) This Act may be cited as the Criminal Justice (Smuggling of Persons) Act 2021.
- (2) This Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provisions and different days may be so appointed for different purposes or different provisions.

#### **Interpretation**

2. In this Act—

“Act of 2004” means the Immigration Act 2004;

“designated state” means any of the following, other than the State:

- (a) a Member State;
- (b) the Republic of Iceland;

<sup>1</sup> OJ No. L328, 05.12.2002, p. 17

<sup>2</sup> OJ No. L328, 05.12.2002, p. 1

- (c) the Principality of Liechtenstein;
- (d) the Kingdom of Norway;
- (e) the Swiss Confederation;
- (f) the United Kingdom of Great Britain and Northern Ireland;
- (g) a Protocol state;
- (h) a state that is declared under *section 28* to be a designated state;

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“immigration law”, in relation to a designated state, means a law which has effect in the designated state and which controls the entry into, transit across or presence in the designated state of a person who is not a national of that state;

“Irish ship” means an Irish ship within the meaning of section 9 of the Mercantile Marine Act 1955;

“Member State” means a Member State of the European Union;

“Minister” means the Minister for Justice;

“outer limit of the territorial seas” has the meaning assigned to it in section 83 of the Sea-Fisheries and Maritime Jurisdiction Act 2006;

“Protocol state” means a state, other than the State, that is a party to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000;

“ship” includes any vessel used in navigation, other than—

- (a) a warship, naval auxiliary or other vessel in the service of the Defence Forces or the navy or military of another state, or
- (b) any other vessel owned or operated by a government and used, for the time being, only on government non-commercial service;

“United Kingdom of Great Britain and Northern Ireland” includes the Channel Islands and the Isle of Man;

“vehicle” means a car, van, lorry, ship, aircraft, railway train or any other means of transport, mechanically propelled or not, used, constructed or adapted to carry or convey persons or goods by land, water or air and includes any container, trailer, tank or any other thing, which—

- (a) is or may be used for the storage of goods in the course of carriage, and
- (b) is designed or constructed to be placed on, in or attached to, any such vehicle;

“vessel” means a waterborne craft of any type, whether self-propelled or not, and includes an air cushion craft;

“warship” means a ship belonging to the armed forces of a state bearing the external



marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the state and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

### **Repeals**

3. Subject to *section 30*, sections 2, 3, 4, 7 and 11 of the Illegal Immigrants (Trafficking) Act 2000 are repealed.

### **Expenses**

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

## PART 2

### SMUGGLING OF PERSONS

### **Interpretation (*Part 2*)**

5. (1) In this Part—

“assists”, subject to *subsection (2)*, includes procures, organises or facilitates;

“company” means a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act;

“equivalent status” means, in relation to a designated state, a status under the law or administrative practice of that state that is equivalent to international protection;

“fraudulent travel or identity document” means any travel or identity document that—

- (a) has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of the State or another state,
- (b) has been improperly issued or obtained through misrepresentation, corruption or duress, or in any other unlawful manner, or
- (c) is used, as evidence of the person’s identity or citizenship, by a person other than the rightful holder;

“international protection” has the meaning it has in section 2 of the International Protection Act 2015;

“specified provision” means any of the following—

- (a) section 4, 5 or 6 of the Act of 2004, or

- (b) a provision that is the subject of an order under *section 29*;  
“travel or identity document” includes the following:
- (a) a passport or document which can be used instead of a passport;
  - (b) a document issued by or on behalf of a Minister of the Government and permitting or authorising a person to enter or remain (whether temporarily or permanently) in the State, or to enter employment or self-employment therein;
  - (c) a registration certificate issued under Article 11(1)(e)(i) of the Aliens Order 1946 (S.I. No. 395 of 1946) or the Act of 2004;
  - (d) a document, issued by the competent authority of another state, that is equivalent, under the law of that state, to a document specified in *paragraph (b)* or *(c)*.
- (2) For the purposes of *section 6* and *7*, assisting the presence in the State or in a designated state of a person does not include the provision by another person, in the ordinary course of his or her business, trade or profession, whether for profit or otherwise, of a good or service to the person.

#### **Assisting unlawful entry into, transit across or presence in State**

6. (1) A person is guilty of an offence if he or she intentionally assists the entry into, transit across or presence in the State of another person, where—
- (a) such entry into, transit across or presence in the State is in breach of a specified provision, and
  - (b) the first-mentioned person knows or has reasonable cause to believe that such entry into, transit across or presence in the State is in breach of a specified provision.
- (2) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under *subsection (1)*, is guilty of an offence.
- (3) A person who, in a place outside the State, aids, abets, counsels, procures or attempts the commission of an offence under *subsection (1)* or *subsection (2)* is guilty of an offence.

#### **Assisting unlawful entry into, transit across or presence in designated state**

7. (1) A person is guilty of an offence if he or she intentionally assists the entry into, transit across or presence in a designated state of another person, where—
- (a) such entry into, transit across or presence in the designated state is in breach of an immigration law in the designated state, and
  - (b) the first-mentioned person knows or has reasonable cause to believe that such entry into, transit across or presence in the designated state is in breach of an immigration law in the designated state.

- (2) Subject to *subsection (4)*, a person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under *subsection (1)*, is guilty of an offence.
- (3) Subject to *subsection (4)*, a person who, in a place outside the State, aids, abets, counsels, procures or attempts the commission of an offence under *subsection (1)* or *subsection (2)* is guilty of an offence.
- (4) *Subsections (2) and (3)* apply to conduct engaged in outside the State, where the conduct—
- (a) occurs on board an Irish ship,
  - (b) occurs on an aircraft registered in the State,
  - (c) is engaged in by a person who is an Irish citizen or a person ordinarily resident in the State,
  - (d) is engaged in for the benefit of a company or any other body established under the law of the State,
  - (e) occurs on board a ship registered in a Protocol state,
  - (f) occurs on board a ship not registered in any country or territory, or
  - (g) constitutes an offence for which the person would be liable to extradition or surrender and—
    - (i) a request for a person’s surrender for the purpose of trying him or her for an offence in respect of the conduct concerned has been made by a state in relation to which Part II of the Extradition Act 1965 applies, and that request has been finally refused (whether as a result of a decision of a court or otherwise), or
    - (ii) a relevant arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct concerned, and a final determination has been made that the relevant arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned.
- (5) For the purposes of this section and *section 8* a person shall be deemed to be ordinarily resident in the State if the person had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence.
- (6) In this section and *section 8*, “relevant arrest warrant” and “issuing state” have the same meanings as they have in the European Arrest Warrant Act 2003 (as amended by the European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021 (S.I. No. 150 of 2021)).

**Provision etc. of fraudulent travel or identity document for purpose of assisting entry into, transit across, or presence in State or designated state**

8. (1) A person is guilty of an offence if he or she produces, procures, provides, possesses or controls a fraudulent travel or identity document with the intention that it shall be used for the purpose of assisting the entry into, transit across or presence in the State of another person where—
- (a) such entry into, transit across or presence in the State is in breach of a specified provision, and
  - (b) the first-mentioned person knows or has reasonable cause to believe that such entry into, transit across or presence in the State is in breach of a specified provision.
- (2) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under *subsection (1)*, is guilty of an offence.
- (3) A person who, in a place outside the State, aids, abets, counsels, procures or attempts the commission of an offence under *subsection (1)* or *subsection (2)* is guilty of an offence.
- (4) A person is guilty of an offence if he or she produces, procures, provides, possesses or controls a fraudulent travel or identity document with the intention that it shall be used for the purpose of assisting the entry into, transit across or presence in a designated state of another person where—
- (a) such entry into, transit across or presence in the designated state is in breach of an immigration law in the designated state concerned, and
  - (b) the first-mentioned person knows or has reasonable cause to believe that such entry into, transit across or presence in the designated state is in breach of an immigration law in the state concerned.
- (5) Subject to *subsection (7)*, a person who, in a place outside the State, engages in conduct that, if the conduct occurred in the State, would constitute an offence under *subsection (4)*, is guilty of an offence.
- (6) Subject to *subsection (7)*, a person who, in a place outside the State, aids, abets, counsels, procures or attempts the commission of an offence under *subsection (4)* or *subsection (5)* is guilty of an offence.
- (7) *Subsections (5)* and *(6)* apply to conduct engaged in outside the State, where the conduct—
- (a) occurs on board an Irish ship,
  - (b) occurs on an aircraft registered in the State,
  - (c) is engaged in by a person who is an Irish citizen or a person ordinarily resident in the State,

- (d) is engaged in for the benefit of a company or any other body established under the law of the State,
- (e) occurs on board a ship not registered in any country or territory, or
- (f) constitutes an offence for which the person would be liable to extradition or surrender and—
  - (i) a request for a person's surrender for the purpose of trying him or her for an offence in respect of the conduct concerned has been made by a state in relation to which Part II of the Extradition Act 1965 applies, and that request has been finally refused (whether as a result of a decision of a court or otherwise), or
  - (ii) a relevant arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct concerned, and a final determination has been made that the relevant arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned.

#### **Offences under *Part 2*: further provisions**

9. (1) It shall be a defence in any proceedings against a person for an offence under *section 6, 7 or 8* for the person charged with the offence to prove, on the balance of probabilities, that the conduct alleged to constitute the offence was engaged in by him or her—
- (a) in order to provide, in the course of his or her work on behalf of a *bona fide* organisation, assistance to a person seeking international protection in the State or equivalent status in another state if the purposes of that organisation include giving assistance without charge to persons seeking such protection or status, or
  - (b) for the purpose of providing humanitarian assistance, otherwise than for the purpose of obtaining, directly or indirectly, a financial or material benefit.
- (2) Notwithstanding *section 7* of the Criminal Law Act 1997, it shall not be an offence for a person to aid, abet, counsel or procure another person to commit an offence under *section 6, 7 or 8* relating to the entry into, transit across or presence in the State, or a designated State, of the first-mentioned person.

#### **Penalties (*Part 2*)**

10. (1) A person guilty of an offence under *section 6, 7 or 8* is liable—
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or both, or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or both.

- (2) Without prejudice to any other enactment or rule of law, a court shall, in determining the sentence to be imposed on a person for an offence under *section 6, 7 or 8*, except where it considers that there are exceptional circumstances justifying its not so doing, treat as an aggravating factor any behaviour by the offender related to the commission of the offence—
- (a) that endangered or was likely to endanger the life or safety of the person to whom the offence related, or
  - (b) that resulted in the exploitation or inhuman or degrading treatment of the person to whom the offence related,
- and the court shall impose a sentence that is greater than that which it would have imposed in the absence of such an aggravating factor.
- (3) The sentence imposed as a result of the application of *subsection (2)* shall not be greater than the maximum sentence permissible for the offence concerned.

### PART 3

#### ENFORCEMENT MEASURES AGAINST SMUGGLING OF PERSONS

#### Interpretation (*Part 3*)

**11.** In this Part—

“enforcement officer” means—

- (a) a member of the Garda Síochána,
- (b) an officer of customs (within the meaning of section 2 of the Customs Act 2015),
- (c) a member of the Naval Service of the Defence Forces not below the rank of petty officer, or
- (d) an immigration officer (within the meaning of section 3 of the Act of 2004);

“master”, in relation to a ship, means the person having, for the time being, the command or charge of the ship.

#### Exercise of enforcement powers in respect of ships

**12.** (1) This subsection applies to—

- (a) an Irish ship,
- (b) a ship registered in a Protocol state, or
- (c) a ship not registered in any country or territory.

- (2) Subject to this section, where an enforcement officer has reasonable grounds to suspect that an offence under *section 6 or 7* has been, or is being, committed on board a ship to which *subsection (1)* applies, he or she may, for the purpose of the detection

of the offence or the taking of appropriate action in respect of any such offence, exercise the powers conferred on him or her by *section 14*.

- (3) (a) An enforcement officer shall not exercise the powers conferred on him or her by *section 14* outside the outer limit of the territorial seas of the State in relation to a ship registered in a Protocol state without the authority of the Minister for Foreign Affairs given in accordance with this subsection.
- (b) The Minister for Foreign Affairs shall not give his or her authority to the exercise of powers referred to in *paragraph (a)* unless the Protocol state concerned has in relation to that ship—
- (i) requested the assistance of the State for the purpose referred to in *subsection (2)*, or
- (ii) authorised the State to act for that purpose.
- (c) In giving his or her authority under *paragraph (b)*, the Minister for Foreign Affairs shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by the Protocol state.
- (4) (a) An enforcement officer shall not exercise the powers conferred on him or her by *section 14* in the territorial seas of any state other than the State without the authority of the Minister for Foreign Affairs given in accordance with this subsection.
- (b) The Minister for Foreign Affairs shall not give his or her authority to the exercise of powers referred to in *paragraph (a)* unless the state concerned has consented to the exercise of those powers for the purpose referred to in *subsection (2)*.
- (c) In giving his or her authority under *paragraph (b)*, the Minister for Foreign Affairs shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by the state concerned.

#### **Protocol state powers and Irish ships**

- 13.** The Minister for Foreign Affairs may, either of his or her own motion or in response to a request from a Protocol state, authorise a Protocol state to exercise, in relation to an Irish ship, powers corresponding to those conferred on enforcement officers by *section 14* but subject to such conditions or limitations, if any, as he or she may impose.

#### **Enforcement powers in respect of ships**

- 14.** (1) An enforcement officer may, in relation to a ship to which *section 12(2)* applies, and subject to that section, do any of the following:
- (a) stop the ship;
- (b) board the ship;

- (c) if he or she considers it necessary for the performance of his or her functions under this Act, do either or both of the following:
    - (i) require the ship to be taken to a port in the State;
    - (ii) detain the ship at a port in the State;
  - (d) search without a warrant the ship and anything on it, including its cargo;
  - (e) require any person on the ship to give information concerning himself or herself, any other person on the ship, the ship or anything on the ship;
  - (f) without prejudice to the generality of the powers conferred by *paragraphs (d) and (e)*—
    - (i) open any container,
    - (ii) carry out tests and take samples of anything on the ship,
    - (iii) require the production of any document, book or record relating to the ship or anything or any person on it, and
    - (iv) take photographs or make copies of anything the production of which he or she has the power to require;and
  - (g) search without a warrant any person who the enforcement officer has reasonable grounds to suspect has committed an offence under *section 6 or 7*.
- (2) If an enforcement officer has reasonable grounds to suspect that an offence under *section 6 or 7* has been committed on the ship concerned, he or she may—
- (a) arrest without warrant any person whom he or she has reasonable grounds for suspecting to be guilty of the offence, and
  - (b) seize and retain anything found on the ship which appears to him or her to be evidence of the offence, and section 9 of the Criminal Law Act 1976 shall apply in relation to anything seized and retained under this paragraph.
- (3) An enforcement officer shall, if required, produce evidence of his or her authority.
- (4) In the performance of his or her functions under this Act, an enforcement officer may—
- (a) use reasonable force, if necessary,
  - (b) require the master or any member of the crew of the ship concerned to take such action as may be necessary to assist the enforcement officer,
  - (c) take with him or her, and use, any equipment or materials that he or she considers necessary, and
  - (d) be accompanied by any other person with a specialised or technical knowledge or skill who the enforcement officer considers may be of assistance to him or her in the performance of those functions.



- (5) A person referred to in *paragraph (d) of subsection (4)* shall, for the purpose of providing the assistance referred to in that paragraph, have and be conferred with the powers and duties of the enforcement officer concerned, other than the power of arrest under *subsection (2)(a)*.
- (6) Where an enforcement officer detains a ship under *subsection (1)(c)(ii)*—
- (a) he or she shall give a notice, signed by him or her, to the master of the ship stating that the ship is detained and informing the master of the effect of this subsection, and
  - (b) an enforcement officer, where he or she is satisfied that the detention of the ship is no longer necessary for the performance by an enforcement officer of his or her functions under this Act, shall, without delay, give the master of the ship a notice in writing withdrawing the notice given under *paragraph (a)*.
- (7) Where a person on board a ship has been arrested under *subsection (2)(a)*—
- (a) the enforcement officer (where that officer is not a member of the Garda Síochána) shall, as soon as practicable, deliver that person into the custody of a member of the Garda Síochána to be dealt with in accordance with law, and
  - (b) the person shall, as soon as practicable, be taken to a Garda Síochána station, and may be detained there under section 4 of the Criminal Justice Act 1984 for such period as is authorised by that section, as if the time of his or her arrival at the Garda Síochána station were the time of his or her arrest.
- (8) A person who—
- (a) intentionally obstructs an enforcement officer, or a person referred to in *subsection (4)(d)*, in the performance of any of his or her functions under this Act,
  - (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer, or a person referred to in *subsection (4)(d)*, in the performance of those functions, or
  - (c) in purporting to give information required by an enforcement officer, or a person referred to in *subsection (4)(d)*, for the performance of those functions—
    - (i) makes a statement which he or she knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
    - (ii) intentionally fails to disclose any material particular,
- is guilty of an offence.
- (9) Where an enforcement officer is exercising powers pursuant to *subsection (3)(a) or (4)(a) of section 12*, in accordance with that section—
- (a) the enforcement officer may require the ship to be taken to a port in the state concerned or, if that state has so requested, in any other state or territory willing to receive it, and

- (b) the enforcement officer may, having regard to the law applicable at the place to which the ship is brought, make arrangements in accordance with that law for, as the case may be, the arrest or detention of a person, or the transfer to the custody of a police officer or such other authority as may be specified in that law or to a judicial authority of the person arrested.
- (10) A person acting for or on behalf of a Protocol State shall not be liable in any criminal proceedings in the State for anything done in the purported exercise of powers in relation to an Irish ship on the authority of the Minister for Foreign Affairs under *section 13*.
- (11) Any person who, in relation to a person referred to in *subsection (10)*, does any of the things referred to in *paragraph (a), (b) or (c) of subsection (8)*, is guilty of an offence.
- (12) A person who, outside the State, engages in any conduct in relation to—
- (a) an enforcement officer,
  - (b) a person referred to in *subsection (4)(d)*, or
  - (c) a person referred to in *subsection (10)*,
- that, if the conduct occurred in the State, would constitute an offence, is guilty of an offence.
- (13) An enforcement officer or a person referred to in *subsection (4)(d)* shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his or her functions under this Act if the court before which the proceedings are being heard is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (14) A person guilty of an offence under *subsection (8)(c)* shall be liable—
- (a) on summary conviction, to a class C fine or to imprisonment for a term not exceeding 12 months or both, or
  - (b) on conviction on indictment, to a class A fine or to imprisonment for a term not exceeding 2 years or both.
- (15) A person guilty of an offence under this section, other than *subsection (8)(c)*, shall be liable—
- (a) on summary conviction, to a class C fine or to imprisonment for a term not exceeding 12 months or both, or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or both.
- (16) A statement made by a person, pursuant to a requirement by an enforcement officer or a person referred to in *subsection (4)(d)* in the performance of any of his or her functions under this Act, shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under *subsection (8)(c)*).

**Power to detain vehicle**

15. (1) Where a person is arrested for an offence under *section 6* or *7* and a member of the Garda Síochána suspects a vehicle of having been used by the person for the purpose of the commission of the offence, the member may detain the vehicle for a period not exceeding 48 hours.
- (2) At any time before the expiration of the period referred to in *subsection (1)*, on application to it in that behalf by a member of the Garda Síochána, the court may, if it is satisfied that—
- (a) proceedings have been instituted or are to be instituted against the person for an offence under *section 6* or *7*,
  - (b) there are reasonable grounds for believing that the vehicle is one which could, on conviction on indictment of the person for that offence, and having regard to *section 16(6)*, be the subject of a forfeiture order under that section, and
  - (c) there are reasonable grounds for believing that the vehicle would be removed from the State or sold or otherwise disposed of before the determination of the proceedings for that offence,
- make an order authorising the further detention of the vehicle by the Garda Síochána for such period, not exceeding 3 months, as may be specified in the order.
- (3) The court may from time to time, if it is satisfied in relation to the matters referred to in *paragraph (a), (b) and (c) of subsection (2)* on application to it in that behalf by a member of the Garda Síochána before the expiration of the period specified in an order under that subsection, make an order authorising the detention of the vehicle by the Garda Síochána for such further period not exceeding 3 months as may be specified in the order.
- (4) (a) A vehicle shall not be detained under this section for periods exceeding 2 years in total.
- (b) The detention of a vehicle under this section shall cease where proceedings for an offence under *section 6* or *7* have been instituted against the person and—
- (i) the proceedings are summary proceedings,
  - (ii) the proceedings are discontinued, or
  - (iii) the person is acquitted of the charge concerned and the time for taking an appeal has passed.
- (5) At any time while a vehicle is being detained under this section, a person specified in *paragraph (a), (b) or (c) of section 16(2)* may apply to the court for its release and the court may—
- (a) order the release of the vehicle unconditionally if it is satisfied that *paragraphs (a), (b) and (c) of subsection (2)* no longer apply,
  - (b) on such security being given as it considers satisfactory, release the vehicle subject to the condition that it will be delivered up to the Garda Síochána if—

- (i) the person concerned is convicted of the offence charged, and
  - (ii) an order for its forfeiture is made under *section 16*,
- or
- (c) order the release of the vehicle subject to such other conditions as it considers appropriate, including a condition that the vehicle is not, pending the determination of the proceedings for the offence, removed from the State, sold, destroyed or otherwise disposed of.
- (6) If a vehicle released on the giving of security referred to in *subsection (5)(b)* is removed from the State, sold, destroyed or otherwise disposed of without the leave of the court, the court may order the forfeiture of the security.
  - (7) This section is without prejudice to any power to seize or detain property which may be exercised by a member of the Garda Síochána or any other person under this Act or any other enactment.
  - (8) In this section, “court” means—
    - (a) if proceedings have not been instituted against the person for an offence under *section 6* or *7*, the District Court, and
    - (b) if proceedings have been instituted, the court hearing the proceedings.
  - (9) A reference in this section and *section 16* to a vehicle includes a reference to the equipment, fittings and furnishings of the vehicle.

#### **Forfeiture of ship, aircraft or other vehicle**

- 16.** (1) Subject to this section, where a person is convicted on indictment of an offence under *section 6* or *7* and the court by or before which the person is convicted is satisfied that a vehicle—
- (a) was used by the person for the purpose of committing the offence, or
  - (b) was intended by the person to be used for that purpose,
- the court concerned may, in addition to or instead of any penalty that it may impose under *section 10*, order the vehicle, or the appropriate share thereof, to be forfeited to the State and may make such other orders as it considers necessary or expedient for the purpose of giving effect to the forfeiture.
- (2) *Subsection (1)* shall not apply to a person unless the person convicted is—
    - (a) the owner of, or of a share in, the vehicle concerned,
    - (b) a director or manager of a company which is the owner of, or of a share in, the vehicle concerned, or
    - (c) subject to *subsection (3)*, the person in charge of the vehicle concerned.

- (3) In a case where the person convicted is the person in charge of the vehicle concerned, but not a person referred to in *paragraph (a) or (b) of subsection (2), subsection (1)* shall not apply unless—
- (a) the owner of, or of a share in, the vehicle concerned, or
  - (b) a director or manager of a company which is the owner of, or of a share in, the vehicle concerned,
- knew or could with reasonable diligence have discovered that the vehicle was being used for the purpose of the commission of an offence under *section 6 or 7*.
- (4) Whenever an order is made under this section, a member of the Garda Síochána may, for the purpose of giving effect thereto—
- (a) where the vehicle concerned is not already detained, seize and detain the vehicle concerned, and
  - (b) do such other things as are authorised by the order or are necessary for the purpose aforesaid.
- (5) A court shall not order a vehicle to be forfeited under this section in a case where a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to the person to show cause why the order should not be made.
- (6) In considering whether to make an order under this section, the court shall have regard to—
- (a) the value of the property, and
  - (b) the likely financial and other effects, on the person whose property it is proposed to forfeit, of the making of the order (taken together with any other order that the court contemplates making).
- (7) A court may—
- (a) in making an order under this section, include such provisions in that order, or
  - (b) as the case may require, make an order supplemental to that order that contains such provisions,
- as appear to it to be necessary to protect any interest in the property, the subject of the order, of a person other than the person in respect of whom *subsection (1)* applies.
- (8) An order under this section shall not take effect until the ordinary time for instituting an appeal against the order or the conviction concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.
- (9) Where a vehicle is the subject of an order under this section, and subject to any provision in the order—
- (a) the order shall operate to deprive the owner of his or her rights, if any, in the vehicle, and

- (b) the vehicle may be disposed of in such manner as the Minister may direct.
- (10) In this section, “owner”, in relation to a vehicle which is the subject of a hire-purchase agreement (within the meaning of the Consumer Credit Act 1995), includes the person in possession of it under that agreement.
- (11) Nothing in this section shall affect the operation of a provision in any other enactment under which property is, or may be ordered to be, forfeited as a result of a conviction for an offence.

## PART 4

## MISCELLANEOUS MATTERS

**Proceedings related to offences committed outside State or on a ship**

17. (1) Proceedings for an offence under *section 6, 7, 8 or 14* alleged to have been committed outside the State or on a ship 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) Where a person is charged with an offence under—
- (a) *section 6(2) or (3)*,
  - (b) *section 7(2) or (3)*,
  - (c) *section 8(5) or (6)*, or
  - (d) *section 6, 7 or 14* to which *subsection (3)* applies,
- no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.
- (3) Without prejudice to *subsection (2)*, proceedings for an offence under *section 6, 7 or 14* alleged to have been committed outside the outer limit of the territorial seas on a ship registered in a Protocol state shall be instituted only where the powers referred to in *section 14* have been exercised with the authority of the Minister for Foreign Affairs given in accordance with *section 12(3) or (4)*.

**Evidence in proceedings under Act**

18. (1) In any proceedings relating to an offence under this Act—
- (a) a certificate that is signed by an officer of the Minister for Foreign Affairs and stating that a passport was issued by that Minister of the Government to a person on a specified date, and
  - (b) a certificate that is signed by an officer of the Minister and stating that, to the best of the officer’s knowledge and belief, the person has not ceased to be an Irish citizen,

shall be evidence that the person was an Irish citizen on the date on which the offence concerned is alleged to have been committed, unless the contrary is shown.

- (2) In any proceedings for an offence under *section 7* or *subsections (4) to (6) of section 8*, a certificate—
- (a) purporting to be signed by a lawyer practising in the designated state concerned, and
  - (b) stating that the entry into, transit across or presence in the designated state to which the offence relates is in breach of an immigration law in that designated state,
- is evidence of the matters referred to in that certificate, unless the contrary is shown.
- (3) A certificate referred to in *subsection (2)* is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.
- (4) In a case where a certificate referred to in *subsection (2)* is written in a language other than the Irish language or the English language, unless the contrary is shown—
- (a) a document purporting to be a translation of that certificate into the Irish language or the English language, as the case may be, and that is certified as correct by a person appearing to be competent to so certify, is taken—
    - (i) to be a correct translation of the certificate, and
    - (ii) to have been certified by the person purporting to have certified it,and
  - (b) the person is taken to be competent to so certify.
- (5) A document purporting to be a certificate signed by the Minister for Foreign Affairs stating that—
- (a) in exercise of the powers conferred on him or her by *section 12(3) or (4)*, he or she has given his or her authority in accordance with the subsection concerned, or
  - (b) in exercise of the powers conferred on him or her by *section 13*, he or she has authorised a Protocol state to exercise the powers referred to in that section,
- is evidence of the facts stated in the certificate, unless the contrary is shown.
- (6) If, in any proceedings relating to an offence under this Act, a question arises as to whether a state was at a particular time a designated state, a certificate signed by, or by a person authorised by, the Minister for Foreign Affairs and stating any fact relating to the question shall be evidence of that fact, unless the contrary is shown.
- (7) In any proceedings for an offence under *section 7* committed in the circumstances referred to in *section 7(4)(g)*, or an offence under *section 8* committed in the circumstances referred to in *section 8(7)(f)*, a certificate purporting to be signed by the Director of Public Prosecutions and stating any of the matters referred to in *section 7(4)(g)* or *section 8(7)(f)*, as the case may be, is evidence of those matters, and is taken

to have been signed by the Director of Public Prosecutions, unless the contrary is shown.

### Double jeopardy

19. (1) Where a person has been acquitted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under *section 6, 7, 8, 14 or 20* consisting of the alleged conduct constituting the first-mentioned offence.
- (2) Where a person has been convicted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under *section 6, 7, 8, 14 or 20* consisting of the conduct constituting the first-mentioned offence.

### Offences by bodies corporate, etc.

20. (1) Where a relevant offence is committed for the benefit of a body corporate by a relevant person and the commission of the relevant offence is attributable to the failure, by a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, to exercise, at the time of the commission of the relevant offence and in all the circumstances of the case, the requisite degree of supervision or control of the relevant person, the body corporate shall be guilty of an offence.
- (2) In proceedings for an offence under *subsection (1)*, it shall be a defence for a body corporate against which such proceedings are brought to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (3) Where a relevant offence is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (4) Where the affairs of a body corporate are managed by its members, *subsection (3)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.
- (5) *Subsection (1)*—
- (a) is without prejudice to the other circumstances, under the general law, whereby acts or omissions of a natural person are attributed to a body corporate resulting in criminal liability of that body corporate for those acts or omissions, and
- (b) does not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence referred to in that subsection.
- (6) A body corporate guilty of an offence under *subsection (1)* shall be liable, on summary conviction, to a class A fine and, on conviction on indictment, to a fine.



(7) In this section—

“relevant offence” means—

- (a) an offence under *section 6, 7 or 8*,
- (b) an offence of aiding, abetting, counselling, procuring or attempting the commission of an offence under *section 6, 7 or 8*;

“relevant person”, in relation to a body corporate, means—

- (a) a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, or
- (b) an employee, subsidiary or agent of the body corporate;

“subsidiary”, in relation to a body corporate, has the same meaning as it has in the Companies Act 2014.

## PART 5

### AMENDMENTS TO OTHER ENACTMENTS

#### **Amendment of Criminal Law Act 1976**

**21.** Section 8 of the Criminal Law Act 1976 is amended in subsection (1) by the substitution of the following paragraphs for paragraphs (i) to (l):

- “(i) an offence under this Act;
- (j) an offence under section 12(1) of the Firearms and Offensive Weapons Act 1990;
- (k) an offence under section 112(2) of the Road Traffic Act 1961 (substituted by section 3(7) of the Road Traffic (Amendment) Act 1984);
- (l) an offence under section 2 of the Illegal Immigrants (Trafficking) Act 2000;
- (m) an offence under *section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021.*”.

#### **Amendment of Schedule to Bail Act 1997**

**22.** The Schedule to the Bail Act 1997 is amended by—

- (a) the deletion of paragraph 27A, and
- (b) the insertion of the following after paragraph 42:

*“Offences relating to smuggling of persons*

43. Any offence under section 2 of the Illegal Immigrants (Trafficking) Act 2000.
44. Any offence under *section 6, 7, 8 or 14 of the Criminal Justice (Smuggling of Persons) Act 2021.*”.

**Amendment of Road Transport Act 2011**

23. Section 2 of the Road Transport Act 2011 is amended in subsection (1) by the insertion of the following paragraph after paragraph (e):

“(ea) an offence under *section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021,*”.

**Amendment of Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012**

24. Section 12 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 is amended in subsection (1) by the insertion of the following paragraph after paragraph (e):

“(ea) an offence under *section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021,*”.

**Amendment of Schedule to Taxi Regulation Act 2013**

25. The Schedule to the Taxi Regulation Act 2013 is amended in Part 2 by the insertion of the following paragraph after paragraph 24:

*“Offences related to smuggling of persons*

25. An offence under section 2 of the Illegal Immigrants (Trafficking) Act 2000.
26. An offence under *section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021.*”.

**Amendment of European Communities (Communication of Passenger Data) Regulations 2011**

26. Regulation 2 of the European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011) is amended in paragraph (1)—

(a) in the definition of “immigration offence”—

- (i) in paragraph (e), by the substitution of “(No. 26 of 2003),” for “No. 26 of 2003), or”,
- (ii) in paragraph (f), by the substitution of “(No. 1 of 2004), or” for “(No. 1 of 2004);”, and

(iii) by the insertion of the following paragraph after paragraph (f):

“(g) *Criminal Justice (Smuggling of Persons) Act 2021* (No. 42 of 2021);”,

and

(b) by the substitution of the following definition for the definition of “smuggling”:

“ ‘smuggling of persons’ means conduct that constitutes an offence under—

(a) section 2 of the *Illegal Immigrants (Trafficking) Act 2000* (No. 29 of 2000), or

(b) *section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021* (No. 42 of 2021);”.

### **Amendment of Schedule to European Union (Passenger Name Record Data) Regulations 2018**

27. Schedule 2 to the European Union (Passenger Name Record Data) Regulations 2018 (S.I. No. 177 of 2018) is amended—

(a) in paragraph 2, by the deletion of “section 2 of the *Illegal Immigrants (Trafficking) Act 2000* (No. 29 of 2000)”, and

(b) by the substitution of the following paragraph for paragraph 11:

“11. *Facilitation of unlawful entry, residence or transit*

An offence under—

section 2 of the *Illegal Immigrants (Trafficking) Act 2000* (No. 29 of 2000)

*section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021* (No. 42 of 2021)”.

## PART 6

### MISCELLANEOUS

#### **Minister may declare state to be designated state**

28. The Minister may, by order made following consultation with the Minister for Foreign Affairs, declare a state, other than a state referred to in *paragraphs (a) to (g)* of the definition of “designated state” in *section 2*, to be a designated state for the purposes of *paragraph (h)* of that definition, where he or she is satisfied that the state has, by agreement concluded by the state with the European Union, agreed to implement and apply—

- (a) Council Directive 2002/90/EC of 28 November 2002<sup>3</sup> defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision of 28 November 2002<sup>4</sup> on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, or
- (b) an act or measure taken by the European Union amending or building upon the acts referred to in *paragraph (a)*.

### Specified provision

29. The Minister may, by order, declare to be a specified provision for the purpose of this Act any provision of—

- (a) a regulation made under section 3 of the European Communities Act 1972, or
- (b) a statutory instrument made for a purpose referred to in section 4(1) of the European Communities Act 2007,

that is made for the purpose of giving effect to a treaty or act referred to in section 2(1) of the European Communities Act 1972 that relates to the legality of—

- (i) the entry of persons into the European Union,
- (ii) the transit of persons through a Member State to another Member State, or
- (iii) residence of persons in the European Union.

### Transitional arrangements

30. (1) Notwithstanding *section 3*, sections 3 and 4 of the Act of 2000 shall continue to apply in respect of—

- (a) a person who, whether before, on or after the coming into operation of this section—
  - (i) is arrested for, or
  - (ii) convicted of,an offence under section 2 of the Act of 2000,
- (b) proceedings for an offence under section 2 of the Act of 2000, whether instituted before, on or after the coming into operation of this section, and
- (c) a vehicle that, immediately before the coming into operation of this section, is detained under section 3 of the Act of 2000.

(2) In this section, “Act of 2000” means the Illegal Immigrants (Trafficking) Act 2000.

3 OJ No. L328, 05.12.2002, p. 17

4 OJ No. L328, 05.12.2002, p. 1