

General Scheme

Criminal Justice (Terrorist Offences) (Amendment) Bill 2020

Approved by Government 8 September 2020

CRIMINAL JUSTICE (TERRORIST OFFENCES) BILL 2020

ARRANGEMENT OF SECTIONS

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SCHEDULE 1

Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

SCHEDULE 1A

Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences

ACTS REFERRED TO

Criminal Justice (Terrorist Offences) Acts 2005 and 2015

Criminal Justice (Offences relating to Information Systems) Act 2017

CRIMINAL JUSTICE (TERRORIST OFFENCES) BILL 2020

An Act to give effect to Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Head 1: Definitions

Provide for:

The following definition –

In this Act “Principal Act” means the Criminal Justice (Terrorist Offences) Acts 2005 and 2015.

Head 2: Amendment of section 4 of Principal Act

Provide for:

Amendment of section 4 (Definitions for Part 2) of the Principal Act by—

(a) the substitution of the following definition for the definition of “Framework Decision”:

“ “Directive” means Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism* and replacing Council Framework Decision 2002/475/JHA, the text of which is set out for convenience of reference in Schedule 1, and replacing Council Decision 2005/671/JHA, the text of which is set out for convenience of reference in Schedule 1A;”,

(b) the substitution of the following definition for the definition of “terrorist-linked activity”:

“ “terrorist-linked activity”, subject to subsections (2) and (3), means—

(a) an act that is committed in or outside the State and that—

(i) if committed in the State, would constitute an offence specified in Part 2 of Schedule 2, and

(ii) is committed with a view to engaging in a terrorist activity,

(b) an act that is committed in or outside the State and that—

(i) if committed in the State, would constitute an offence specified in Part 3 of Schedule 2, and

(ii) is committed with a view to engaging in a terrorist activity or with a view to committing an act that, if committed in the State, would constitute an offence under section 21 or 21A of the Act of 1939,

(c) public provocation to commit a terrorist offence,

(d) recruitment for terrorism,

- (e) training for terrorism,
- (f) public provocation to commit a terrorist offence by the glorification of terrorist activity,
- (g) receiving training for terrorism,
- (h) travelling for the purpose of terrorism, or
- (i) organising or facilitating travelling for the purpose of terrorism;”,

(c) the insertion of the following definitions:

“ “Council Decision 2005/671/JHA” means the Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences;

“public provocation to commit a terrorist offence by the glorification of terrorist activity” shall be construed in accordance with subsection 4C(2);

“receiving training for terrorism” shall be construed in accordance with section 4D;

“travelling for the purpose of terrorism” shall be construed in accordance with section 4E;

“organising or facilitating travelling for the purpose of terrorism” shall be construed in accordance with section 4F.”, and

(d) the substitution of the following definition for the definition of “terrorist group”:

“ “terrorist group” has the same meaning as in the Directive; (inserted by (a) above)”.

Note

This Head provides for the substitution of a number of definitions to take account of the fact that Council Framework Decision 2002/475/JHA is being repealed by EU Directive 2017/541 and for the inclusion of the new terrorist offences provided for by the Directive in the definition of “terrorist activity”.

In the definition of “terrorist group”, the reference to “Framework Decision” has been replaced with a reference to “Directive” – this appears to be the only provision in the Act in which “Framework Decision” is referenced and which, therefore, requires amendment.

*(O.J. No. L88, 31 3 2017, p.6)

Head 3: Amendment of section 4A of the Principal Act

Provide for:

The substitution of section 4A of the Principal Act with the following section –

“4A (1) For the purposes of this Part, public provocation to commit a terrorist offence means the intentional distribution, or otherwise making available, by whatever means of communication by a person of a message to the public with the intent of encouraging, directly or indirectly, the commission by a person of a terrorist activity (text from 2015 Act).

(2) For the purposes of this Part, public provocation to commit a terrorist offence by the glorification of terrorist activity means the intentional distribution, or otherwise making available, by whatever means of communication by a person of a message to the public that is likely to be understood by a reasonable person as having the intent of encouraging, directly or indirectly, the commission by a person of a terrorist activity.

(3) A message which is likely to be understood by a reasonable person as encouraging, directly or indirectly, the commission by a person of a terrorist activity includes –

(i) every message which glorifies the commission of such activity, and

(ii) is a message from which the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.

(4) How a message is likely to be understood and what the public could reasonably be expected to infer from it must be determined having regard both to the content of the message as a whole and to the circumstances and manner of its distribution.

(5) (a) In proceedings for an offence that is a terrorist-linked activity referred to in paragraph (f) of the definition in section 4 of “terrorist-linked” activity, it shall be a defence for the accused person if he is not shown to have intended the message to encourage, directly or indirectly, the commission by a person of a terrorist

activity, to prove that he was not aware of the content of the message concerned and did not suspect, and had no reason to suspect, that the message encouraged, directly or indirectly, the commission by a person of a terrorist activity.

(b) In proceedings for an offence that is a terrorist-linked activity referred to in paragraph (f) of the definition in section 4 of “terrorist-linked” activity, it shall be a defence for the accused person if he is not shown to have intended the message to encourage, directly or indirectly, the commission by a person of a terrorist activity, to prove that he did not intend the message concerned to, and was not aware that it might, encourage, directly or indirectly, the commission by a person of a terrorist activity.”

(6) In this section “glorification” includes any form of praise or celebration and cognate expressions are to be construed accordingly.”

Note

The offence of public provocation to commit a terrorist offence was inserted into the Principal Act (s. 4A) by s.4 of the CJ (Terrorist Offences) (Amendment) Act 2015 in order to give effect to Article 3 of Council Framework Decision 2008/919/JHA.

This Head gives effect to Article 5 (Public provocation to commit a terrorist offence) of the Directive to take account of the inclusion of “glorification of terrorist acts”, as a means of encouraging the commission by a person of a terrorist activity, in the description of the offence (see also Recital 10).

“Public provocation to commit a terrorist offence by the glorification of terrorist acts” has been included as a separate offence to that of “public provocation to commit a terrorist offence” and a defence has also been provided for (based on s. 2 of the Prohibition of Incitement to Hatred Act 1989).

The provision is based on a similar provision in UK legislation (see section 1 (Encouragement of terrorism) and section 20 (definition of “glorification”) in the Terrorism Act 2006 (as amended by the Terrorism Act 2008)) while following the language of. s 4A as inserted by the 2015 Act.

The summary/indictable penalties for the offence are provided for in s.7 (1)(e)(i) as inserted by s.8 of the 2015 Act and amended by Head 7 of this Bill.

Head 4: Receiving training for terrorism

Provide for:

The amendment of the Principal Act by the insertion of the following section after section 4C -

“4D. Receiving training for terrorism

For the purposes of this Part, receiving training for terrorism means intentionally receiving instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission by a person of a terrorist activity.”.

Note

This Head gives effect to Article 8 (Receiving training for terrorism) of the Directive where it is committed intentionally in relation to offences listed in points (a) to (i) of Article 3(1). It complements the offence of “Providing training for terrorism” which was inserted into the 2005 Act by Council Framework Decision 2008/919/JHA.

Head 5: Travelling for the purpose of terrorism

Provide for:

The amendment of the Principal Act by the insertion of the following section after section 4D (*inserted by Head 4 above*):

“4E. Travelling for the purpose of terrorism

For the purposes of this Part, travelling for the purpose of terrorism means intentionally travelling to a country other than the State –

- (a) for the purpose of committing or contributing to the commission by a person of a terrorist activity,
- (b) for the purpose of the participation by a person in the terrorist activity of a terrorist group with knowledge of the fact that such participation will contribute to the terrorist activity of such a group, or
- (c) for the purpose of providing or receiving training for terrorism for the purpose of committing or contributing to the commission by a person of a terrorist activity.”.

Note “training for terrorism” is defined in s. 4C of the CJ (Terrorist Offences) Act 2005 (as inserted by the 2015 amending Act).

Note

This Head gives effect to Article 9.1 and 9.2(a) (Travelling for the purpose of terrorism) of the Directive where it is committed intentionally in relation to offences referred to in Article 3.

Head 6: Organising or facilitating travelling for the purpose of terrorism

Provide for:

The amendment of the Principal Act by the insertion of the following section after section 4E (*inserted by Head 5 above*):

“4F. Organising or facilitating travelling for the purpose of terrorism

(1) For the purposes of this Part, organising or facilitating travelling for the purpose of terrorism means the intentional organisation or facilitation by a person of travelling of another person for the purpose of committing or contributing to the commission of a terrorist activity [as referred to in Article 9(1) and point (a) of Article 9(2)] knowing that the assistance thus rendered is for that purpose.”.

Note

This Head gives effect to Article 10 (Organising or otherwise facilitating travelling for the purpose of terrorism) of the Directive where it is committed intentionally in relation to offences referred to in Article 3.

Head 7: Amendment of section 7 of Principal Act

Provide for:

The amendment of section 7(1) (Penalties for terrorist offences) of the Principal Act by –

(a) the substitution of the following paragraph for paragraph 7(1)(e) as inserted by s. 8 of the 2015 Act –

“(e) in the case of an offence that is a terrorist-linked activity referred to-

(i) in paragraph (c) and (f) of the definition in section 4 of “terrorist-linked activity” –

(I) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(II) on conviction on indictment, to a fine or imprisonment for a term not exceeding 10 years or both,

(ii) in paragraph (d) of that definition, on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both,

(iii) in paragraph (e) of that definition, on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both,” (*deleting “and”, and substituting comma instead of full stop*)

(b) the addition of the following after paragraph 7(1) (e)(iii) —

“(iv) in paragraph (g) of that definition, on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both,

(v) in paragraph (h) of that definition, on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both, and

(vi) in paragraph (i) of that definition, on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.”, and

(c) the insertion of the following subsection after subsection (2) –

“(2A) (1) Where a court is determining the sentence to be imposed on a person for an offence of recruitment for terrorism or for an offence of providing training for terrorism, the fact that the offence was committed by the person against a child shall be treated, for the purpose of determining the sentence, as an aggravating factor.

(2) Subject to subsection (3), where subsection (1) applies the court shall impose a sentence which is greater than that which would have been imposed if the person against whom the offence was committed was not a child.

(3) Subsection (2) shall not apply where the court considers that there are exceptional circumstances which justify that subsection not being applied.

(4) The sentence imposed as a result of the application of subsection (2) shall not be greater than the maximum sentence permissible for the relevant offence concerned.”.

Note

This Head sets out the penalties for the 3 additional terrorist-linked activities. The penalties are the same as the penalties for the 3 terrorist-linked activities inserted by Council Framework Decision 2008/919/JHA.

The Head also provides for the inclusion of a new subsection (2A) which gives effect to Article 15.4 (Penalties) of the Directive and provides that offences referred to in Article 6 (Recruitment for Terrorism) or 7 (Providing training for terrorism) of the Directive should be treated as aggravating factors when directed towards a child.

While the use of a child in the commission of a criminal offence is a factor which a Court would consider as an aggravating factor under our system, it may be prudent to include this provision to demonstrate accordance with Article 15.4 of the Directive.

The provision is based on s. 40 (Relationship between defendant and victim as aggravating factor in sentencing for certain offences) of the Domestic Violence Act 2018.

Head 8: Insertion of Schedules to Principal Act

Provide for:

The amendment of the Principal Act by the substitution of —

(a) Schedule 1 of this Act for Schedule 1 Part 1 and Part 2 (English version of Directive 2017/541), and

(b) Schedule 1A of this Act for Schedule 1A (Council Framework Decision 2005/671/JHA)

Note

This Head updates the Schedules to the Principal Act by replacing the 2002 and 2008 FDs with the Directive 2008/919 and adding Council FD 2005/671.

Schedules to 2005 Act

The **schedules to the 2005 Act** are set out as follows –

Schedule 1 Part 1 – Irish version FD 2002/475/JHA

Schedule 1 Part 2 – English version FD 2002/475/JHA

Schedule 1A – English version Council FD 2008/919/JHA

Schedule 1B – English version CofE Convention on the Prevention of Terrorism

Schedules to 2020 Bill

As Directive 2017/541 is replacing FD 2002/475 as amended by 2008/919/JHA, Schedule 1 (Part 1 and Part 2) and Schedule 1A are being replaced as follows -

Schedule 1 – English version of Directive 2017/541

Schedule 1A – Council Framework Decision 2005/671/JHA

Schedule 1B - English version CofE Convention on the Prevention of Terrorism – will remain as is.

Head 9: Amendment of Part 1 of Schedule 2 to the Principal Act

Provide for:

The amendment of Part 1 of Schedule 2 to the Principal Act by the insertion of the following paragraph after paragraph 6:

“Offences relating to Information Systems

6A. An offence under section 3 (Interference with information system without lawful authority) or section 4 (Interference with data without lawful authority) of the Criminal Justice (Offences relating to Information Systems) Act 2017.”.

Note

This Head adds additional offences to the list of offences for the purposes of “terrorist activity” as set out in Schedule 2, Part 1 to the Principal Act.

The list of terrorist offences provided for in Article 3 of Directive 2017/540 differs from the list provided for in Article 1 of the original Council Framework Decision 2002/475/JHA in that it includes at (i) an additional offence “illegal system interference ... and illegal data interference ... as referred to in Article 4 and Article 5 of Directive 2013/40/EU (attacks against information systems)”.

Those offences are provided for in sections 3 and 4 of the Criminal Justice (Offences relating to Information Systems) Act 2017 which gives effect to Directive 2013/40/EU. Those offences are, therefore, included in the list of offences which constitute a terrorist offence in Part 1 of Schedule 2 to the 2005 Act.

Head 10: Short title, collective citation and commencement

Provide for the following:

(1) This Act may be cited as the Criminal Justice (Terrorist Offences) Act 2020.

(2) The Principal Act and this Act may be cited together as the Criminal Justice (Terrorist Offences) Acts 2005 [, 2015] and 2020.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provisions and different days may be so appointed for different purposes or different provisions.

**Directive on combatting terrorism 2017/541 replacing CFD 2002/475
as amended by CFD 2008/919**

**Articles in
D. 2017/541**

**Replaced Articles
2002/475 & 2008/919**

Art. 2 Definitions	Art. 2/2008
Art. 3 Terrorist Offences	Art. 1, 2 &3/2008
Art. 4 Offences relating to a terrorist group	Art. 2.2/2008
Art. 5 Public prov. to commit a terrorist offence	Art. 1/2008
Art. 6 Recruitment for terrorism	Art. 1/2008
Art. 7 Providing training for terrorism	Art. 1/2008
Art. 8 Receiving training for terrorism	
Art. 9 Travelling for the purpose of terrorism	
Art. 10 Organising/facilitating travelling...	
Art. 11 Terrorist financing	
Art. 12 Other offences..	Art. 3/2002
Art. 13 Relationship to terrorist offences	Art. 1/2008
Art. 14 Aiding and abetting	Art. 2/2008
Art. 15 Penalties	Art. 5/2002
Art. 16 Mitigating circumstances	Art. 6/2002
Art. 17 Liability of legal persons	Art. 7/2002
Art. 18 Sanctions for legal persons	Art. 8/2002
Art. 19 Jurisdiction and prosecution	Art. 9/2002

Art. 20 Investigative tools and confiscation Dir 2014/42

Art. 21 Measures - public prov. content online

Art. 22 Amendments to Decision 2005/671

Art. 23 Fundamental rights and freedoms Art. 2/2002

Dir. 2012/29/EU - CJ (Victims of Crime) Act 2017

Art. 24 Assistance and support to victims of terrorism

Art. 25 Protection of victims of terrorism

Art. 26 Rights of victims of terrorism

Ar. 29 Reporting

ENDS