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Explanatory Memorandum](#)

Number 32 of 2009

CRIMINAL JUSTICE (AMENDMENT) ACT 2009

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Number 32 of 2009

CRIMINAL JUSTICE (AMENDMENT) ACT 2009

AN ACT—

- (a) TO PROVIDE FOR ADDITIONAL MEASURES WITH RESPECT TO COMBATING ORGANISED CRIME AND, IN PARTICULAR, WITH RESPECT TO COUNTERING THE INCREASED LEVELS OF VIOLENCE TOWARDS, AND INTIMIDATION OF, MEMBERS OF THE PUBLIC PERPETRATED BY CRIMINAL ORGANISATIONS AND SECURING CONDITIONS IN WHICH OFFENCES COMMITTED BY THOSE ASSOCIATED WITH SUCH ORGANISATIONS CAN, IN DUE COURSE OF LAW, BE INVESTIGATED AND PROSECUTED AND, FOR THAT PURPOSE, TO AMEND PART 7 OF THE CRIMINAL JUSTICE ACT 2006 AND CERTAIN OTHER ENACTMENTS;
- (b) TO AMEND THE LAW IN RELATION TO THE INVESTIGATION OF OFFENCES, INCLUDING IN RELATION TO THE DETENTION OF SUSPECTS AND THEIR RE-ARREST IN CERTAIN CIRCUMSTANCES, AND TO OTHERWISE AMEND CRIMINAL LAW AND PROCEDURE; AND
- (c) TO PROVIDE FOR RELATED MATTERS.

[23rd July, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Criminal Justice (Amendment) Act 2009. Short title.

2.—In this Act—

Definitions.

“Act of 1939” means the Offences against the State Act 1939;

“Act of 1984” means the Criminal Justice Act 1984;

“Act of 1996” means the Criminal Justice (Drug Trafficking) Act 1996;

“Act of 1997” means the Criminal Law Act 1997;

“Act of 1999” means the Criminal Justice Act 1999;

“Act of 2006” means the Criminal Justice Act 2006;

“Act of 2007” means the Criminal Justice Act 2007.

PART 2

ORGANISED CRIME

Amendment of section 70 of Act of 2006 – definition of “criminal organisation”, etc.

3.—(1) Section 70(1) of the Act of 2006 is amended—

(a) by substituting the following for the definition of “criminal organisation”:

“‘criminal organisation’ means a structured group, however organised, that has as its main purpose or activity the commission or facilitation of a serious offence;”

and

(b) by substituting the following for the definition of “structured group”:

“‘structured group’ means a group of 3 or more persons, which is not randomly formed for the immediate commission of a single offence, and the involvement in which by 2 or more of those persons is with a view to their acting in concert; for the avoidance of doubt, a structured group may exist notwithstanding the absence of all or any of the following:

(a) formal rules or formal membership, or any formal roles for those involved in the group;

(b) any hierarchical or leadership structure;

(c) continuity of involvement by persons in the group.”.

(2) Section 70 of the Act of 2006 is further amended by adding the following subsection:

“(3) For the purposes of the references in sections 71(2)(d) and 74(1)(b)(i) to a person’s being ordinarily resident in the State, a person shall be taken to be so resident, on the date of the commission of the offence to which section 71(1) or 74(1), as the case may be, applies, if, for the 12 months immediately preceding that date, the person has his or her principal place of residence in the State.”.

Amendment of section 71 of Act of 2006.

4.—Section 71 of the Act of 2006 is amended—

(a) in subsection (2)(d), by substituting “person ordinarily resident in the State” for “stateless person habitually resident in the State”, and

(b) by deleting subsection (5).

5.—The Act of 2006 is amended by inserting the following section after section 71:

Directing activities
of a criminal
organisation.

“Offence of
directing a
criminal
organisation.

71A.—(1) In this section—

(a) ‘directs’, in relation to activities, means—

(i) controls or supervises the activities, or

(ii) gives an order, instruction or guidance, or makes a request, with respect to the carrying on of the activities;

(b) references to activities include references to—

(i) activities carried on outside the State, and

(ii) activities that do not constitute an offence or offences.

(2) A person who directs, at any level of the organisation’s structure, the activities of a criminal organisation is guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(3) Any statement made orally, in writing or otherwise, or any conduct, by the defendant implying or leading to a reasonable inference that he or she was at a material time directing the activities of a criminal organisation shall, in proceedings for an offence under this section, be admissible as evidence that the defendant was doing such at that time.

(4) In proceedings under this section, the court or the jury, as the case may be, in determining whether an offence under this section has been committed, may, in addition to any other relevant evidence, also consider—

(a) any evidence of a pattern of behaviour on the part of the defendant consistent with his or her having directed the activities of the organisation concerned at the material time, and

(b) without limiting paragraph (a) or subsection (3)—

(i) whether the defendant has received any benefit from the organisation concerned, and

- (ii) evidence as to the possession by the defendant of such articles or documents or other records as would give rise to a reasonable suspicion that such articles, documents or other records were in his or her possession or control for a purpose connected with directing the activities of the organisation concerned.

(5) Any document or other record emanating or purporting to emanate from the organisation concerned from which there can be inferred—

(a) either—

- (i) the giving, at the time concerned, of an instruction, order or guidance by the defendant to any person involved in the organisation, or
- (ii) the making, at that time, by the defendant of a request of a person so involved,

or

- (b) the seeking, at that time, by a person so involved of assistance or guidance from the defendant,

shall, in proceedings for an offence under this section, be admissible as evidence that the defendant was directing the activities of the organisation concerned at the material time.

(6) In this section ‘document or other record’ has the same meaning as it has in section 71B.”.

Organised crime:
offence to
participate in, or
contribute to,
certain activities.

6.—The Act of 2006 is amended by substituting the following section for section 72:

“Offence to
participate in,
or contribute
to, certain
activities.

72.—(1) A person is guilty of an offence if, with knowledge of the existence of the organisation referred to in this subsection, the person participates in or contributes to any activity (whether constituting an offence or not)—

(a) intending either to—

- (i) enhance the ability of a criminal organisation or any of its members to commit, or
- (ii) facilitate the commission by a criminal organisation or any of its members of,

a serious offence, or

(b) being reckless as to whether such participation or contribution could either—

(i) enhance the ability of a criminal organisation or any of its members to commit, or

(ii) facilitate the commission by a criminal organisation or any of its members of,

a serious offence.

(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 15 years or both.

(3) The reference in subsection (1) to the commission of a serious offence includes a reference to the doing of an act in a place outside the State that constitutes a serious offence under the law of that place and which act would, if done in the State, constitute a serious offence.

(4) In proceedings for an offence under this section it shall not be necessary for the prosecution to prove—

(a) that the criminal organisation concerned or any of its members actually committed, as the case may be—

(i) a serious offence in the State, or

(ii) a serious offence under the law of a place outside the State where the act constituting the offence would, if done in the State, constitute a serious offence,

(b) that the participation or contribution of the defendant actually—

(i) enhanced the ability of the criminal organisation concerned or any of its members to commit, or

(ii) facilitated the commission by it or any of its members of,

a serious offence, or

(c) knowledge on the part of the defendant of the specific nature of any offence referred to in subsection (1)(a) or (b).

(5) In determining whether a person participates in or contributes to an activity referred to in subsection (1), the court may consider, *inter alia*, whether the person—

(a) uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organisation concerned, or

(b) receives any benefit from the criminal organisation concerned.

(6) In proceedings for an offence under this section, it shall be presumed, until the contrary is shown, that the participation or contribution (the 'relevant act') of the defendant referred to in subsection (1) was engaged in or made with the state of mind on the defendant's part referred to in paragraph (a) or (b) of that subsection if the circumstances under which the relevant act was committed—

(a) involved either—

(i) the possession by the defendant, whilst in the presence of one or more other persons, of any article or item referred to in the Table to this section, or

(ii) there being present in (or, in the case of a false registration plate referred to in paragraph 8 of that Table, present in or affixed to) any vehicle—

(I) the use of which appears connected with the relevant act, and

(II) of which the defendant and one or more other persons were occupants on or about the date of commission of the relevant act,

any such article or item,

and

(b) those circumstances are such as give rise to a reasonable suspicion that the defendant's state of mind was as aforesaid at the time of the relevant act's commission.

Table

1. Any balaclava, boiler suit or other means of disguise or impersonation, including any article of Garda uniform or any equipment supplied to a member of the Garda Síochána or imitation thereof.

2. Any firearm (within the meaning of section 1 of the Firearms Act 1925), ammunition for a firearm or device that appears to the ordinary observer so realistic as to make it indistinguishable from a firearm.

3. Any knife to which section 9(1) of the Firearms and Offensive Weapons Act 1990 applies, weapon of offence within the meaning of section 10(2) of that Act or weapon to which section 12 of that Act applies.

4. Any implement for burglary or other article or item for gaining access to any premises or other structure without the permission of the owner or occupier thereof, including any key or card that has been stolen or any access code unlawfully procured.

5. Any plan of any premises or other structure unrelated to any lawful activity, trade or purpose being pursued or engaged in by one or more of the persons referred to in subsection (6)(a).

6. Any controlled drug (within the meaning of the Misuse of Drugs Act 1977).

7. Any substantial amounts, in cash, of any currency unrelated to any lawful activity, trade, transaction or purpose being pursued or engaged in by one or more of the persons referred to in subsection (6)(a).

8. Any false vehicle registration plate, that is to say, any plate purporting to be a plate for a mechanically propelled vehicle registered under section 131 of the Finance Act 1992 and displaying an identification mark other than that duly assigned by the Revenue Commissioners under Chapter IV of Part II of that Act and regulations thereunder.

9. Any article or item for making a counterfeit of any currency note or coin or making a counterfeit or otherwise for making a forgery of any credit or debit card.

10. Any article or item for making copies of any work, being an article or item of a design enabling, and held in circumstances indicating that it would likely be used for, the making, on a substantial scale, of infringing copies (within the meaning of Part II of the Copyright and Related Rights Act 2000) of the work without the copyright owner's consent.

11. Any other article or item prescribed for the purposes of subsection (6).”.

7.—The Act of 2006 is amended by inserting the following section after section 71A (inserted by *section 5*):

“Provisions with respect to proof of criminal organisation's existence.

71B.—(1) In proceedings under this Part the opinion of—

(a) any member of the Garda Síochána, or

Evidential provisions as to proof of criminal organisation's existence.

- (b) any former member of the Garda Síochána,

who appears to the Court to possess the appropriate expertise (in this section referred to as the ‘appropriate expert’) shall, subject to section 74B, be admissible in evidence in relation to the issue as to the existence of a particular criminal organisation.

(2) In subsection (1) ‘expertise’ means experience, specialised knowledge or qualifications.

(3) Without limiting the matters that can properly be taken into account, in the formation of such opinion, by the appropriate expert, it shall be permissible for that expert, in forming the opinion referred to in subsection (1), to take into account any previous convictions for arrestable offences of persons believed by that expert to be part of the organisation to which the opinion relates.

(4) Without prejudice to subsection (1), in proceedings under this Part the following shall be admissible as evidence that a particular group constitutes a criminal organisation—

- (a) any document or other record emanating or purporting to emanate from the group or created or purporting to be created by the defendant—
- (i) from which the group’s existence as a criminal organisation can be inferred;
 - (ii) from which the commission or facilitation by the group of a serious offence or its engaging in any activity in relation thereto can be inferred; or
 - (iii) that uses or makes reference to a name, word, symbol or other representation that identifies the group as a criminal organisation or from which name, word, symbol or other representation it can be inferred that it is such an organisation,
- (b) the provision by a group of 3 or more persons of a material benefit to the defendant (or a promise by such a group to provide a material benefit to the defendant), which provision or promise is not made in return for a lawful act performed or to be performed by the defendant.

(5) In subsection (4) ‘document or other record’ includes, in addition to a document or other record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) a photograph.”.

8.—(1) It is hereby declared that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to an offence under each of the following provisions of Part 7 of the Act of 2006, namely, sections 71A, 72, 73 and 76.

Certain offences under Part 7 of Act of 2006 to be scheduled offences.

(2) An offence specified in *subsection (1)* shall be deemed to be a scheduled offence for the purposes of Part V of the Act of 1939 as if an order had been made under section 36 of the Act of 1939 in relation to it and subsection (3) of that section and section 37 of the Act of 1939 shall apply to such an offence accordingly.

(3) Nothing in *subsection (1)* or (2) shall be construed as affecting, or limiting in any particular case, the exercise—

- (a) by the Government of any of their powers under any provision of section 35 or 36 of the Act of 1939,
- (b) by the Director of Public Prosecutions of his or her power under section 45(2) of the Act of 1939 to direct that a person not be sent forward for trial by the Special Criminal Court on a particular charge, or
- (c) by the Government or the Director of Public Prosecutions of any other of their powers under Part V of the Act of 1939 or by any other person of his or her powers under that Part.

(4) This section shall, subject to *subsection (5)*, cease to be in operation on and from the date that is 12 months from the passing of this Act unless a resolution has been passed by each House of the Oireachtas resolving that this section should continue in operation.

(5) This section may be continued in operation from time to time by a resolution passed by each House of the Oireachtas before its expiry for such period as may be specified in the resolutions.

(6) Before a resolution is passed by either House of the Oireachtas under this section, the Minister for Justice, Equality and Law Reform shall prepare a report, and shall cause a copy of it to be laid before that House, of the operation of this section during the

period beginning on the passing of this Act, or as may be appropriate, the date of the latest previous report under this subsection in relation to this section and ending not later than 21 days before the date of the moving of the resolution in that House.

New section 72A of Act of 2006. **9.**—The Act of 2006 is amended by inserting the following section after section 72:

“Offences
under this
Part:
inferences that
may be drawn.

72A.—(1) Where in any proceedings against a person for an offence under this Part evidence is given that the defendant at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, failed to answer any question material to the investigation of the offence, then the court in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967 or whether there is a case to answer and the court (or subject to the judge’s directions, the jury) in determining whether the defendant is guilty of the offence may draw such inferences from the failure as appear proper; and the failure may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to the offence, but a person shall not be convicted of the offence solely or mainly on an inference drawn from such a failure.

(2) Subsection (1) shall not have effect unless—

- (a) the defendant was told in ordinary language when being questioned what the effect of such a failure might be, and
- (b) the defendant was afforded a reasonable opportunity to consult a solicitor before such a failure occurred.

(3) Nothing in this section shall, in any proceedings—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the defendant in the face of anything said in his or her presence relating to the conduct in respect of which he or she is charged, in so far as evidence thereof would be admissible apart from this section, or
- (b) be taken to preclude the drawing of any inference from the silence or other reaction of the defendant which could be properly drawn apart from this section.

(4) The court (or, subject to the judge’s directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to

whenever, if appropriate, an answer to the question concerned was first given by the defendant.

(5) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

(6) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.

(7) In this section ‘any question material to the investigation of the offence’ means:

- (a) a question requesting that the defendant give a full account of his or her movements, actions, activities or associations during any specified period relevant to the offence being investigated; and
- (b) whichever one, or more than one, of the following is relevant to the offence being investigated—
 - (i) a question relating to any statement or conduct of the type referred to in section 71A(3);
 - (ii) a question relating to any benefit of the type referred to in section 71A(4)(b)(i) or 71B(4)(b) which the member of the Garda Síochána concerned reasonably believes was received by the defendant or on his or her behalf;
 - (iii) a question relating to articles, or documents or other records, of the type referred to in section 71A(4)(b)(ii) or (5)(a);
 - (iv) a question relating to any document or other record of the type referred to in section 71B(4)(a)—
 - (I) created or purporting to be created by the defendant, or
 - (II) found in the possession of the defendant on or about the time of his or her arrest or found on foot of a lawful search of any premises or vehicle occupied by the defendant;

(v) a question relating to the suspected use by the defendant in a document of, or the suspected reference by him or her in a document to, a name, word, symbol or other representation of the type referred to in section 71B(4)(a)(iii);

(vi) a question relating to—

(I) the possession by the defendant, or

(II) the presence in a vehicle referred to in section 72(6)(a)(ii) and in the circumstances involving the defendant referred to in that provision,

of any article or item referred to in the Table to section 72:

provided that no question shall be regarded as being material to the investigation of the offence unless the member of the Garda Síochána concerned reasonably believed that the question related to the participation of the defendant in the commission of the offence.

(8) In this section references to a failure to answer include references to the giving of an answer that is false or misleading and references to the silence or other reaction of the defendant shall be construed accordingly.

(9) This section shall not apply in relation to a failure to answer a question if the failure occurred before the commencement of *section 9* of the *Criminal Justice (Amendment) Act 2009*.”.

Amendment of section 73 of Act of 2006.

10.—Section 73 of the Act of 2006 is amended by substituting, in subsection (3), “15 years” for “10 years”.

Amendment of section 74 of Act of 2006.

11.—Section 74 of the Act of 2006 is amended—

(a) by substituting the following subsection for subsection (1):

“(1) A person who does any act in a place outside the State that would, if done in the State, be an offence under section 71A or 72 and either—

(a) the act in question is done on board an Irish ship or on an aircraft registered in the State, or

(b) the person is—

(i) an individual who is an Irish citizen or ordinarily resident in the State, or

- (ii) a body corporate established under the law of the State or a company within the meaning of the Companies Acts,

then the person is guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of an offence under section 71A or 72, as the case may be.”,

and

- (b) by inserting the following subsection after subsection (2):

“(2A) Proceedings for—

- (a) an offence under section 71 in relation to an act committed outside the State, or

- (b) an offence under subsection (1),

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.”.

12.—The Act of 2006 is amended by inserting the following section after section 74: New section 74A of Act of 2006.

“Aggravating factor: serious offence committed as part of, or in furtherance of, activities of criminal organisation. 74A.—(1) Where a court is determining the sentence to be imposed on a person for a serious offence, the fact that the offence was committed as part of, or in furtherance of, the activities of a criminal organisation shall be treated for the purpose of determining the sentence as an aggravating factor.

(2) Accordingly, the court shall (except where the sentence for the serious offence is one of imprisonment for life or where the court considers that there are exceptional circumstances justifying its not doing so) impose a sentence that is greater than that which would have been imposed in the absence of such a factor.

(3) The sentence imposed shall not be greater than the maximum sentence permissible for the serious offence.”.

13.—The Act of 2006 is amended by inserting the following section after section 74A (inserted by *section 12*): New section 74B of Act of 2006.

“Exclusion of evidence in certain circumstances. 74B.—Nothing in this Part prevents a court, in proceedings thereunder, from excluding evidence that would otherwise be admissible if, in its opinion, the prejudicial effect of the evidence outweighs its probative value.”.

New section 26A of Act of 2007 and amendment of Schedule 2 to that Act.

14.—(1) The Act of 2007 is amended by inserting the following section after section 26:

“Post-release orders in cases of certain offences.

26A.—(1) Where, on or after the commencement of a scheme under subsection (10), a person (other than a person under the age of 18 years), in this section referred to as ‘the offender’, is convicted on indictment of—

- (a) an offence under Part 7 of the Act of 2006, or
- (b) an offence (other than an offence referred to in paragraph (a)) specified in Schedule 2 that has been committed as part of, or in furtherance of, the activities of a criminal organisation,

the court shall, in determining the sentence to be imposed on the offender in respect of that offence, consider whether it is appropriate to make an order under this section (in this section referred to as a ‘post-release (restrictions on certain activities) order’) in relation to him or her for the purpose of the offender’s being subject, after his or her release from prison, to the restrictions and conditions subsequently mentioned in this section.

(2) A post-release (restrictions on certain activities) order shall not be made in relation to the offender unless the court considers that, having regard to—

- (a) the evidence given in the trial of the offender for the offence concerned, and
- (b) evidence that is given to the court in relation to the sentence to be imposed for that offence,

it is in the public interest to make such an order, and in determining whether to make such order the court shall take account of such matters as the court considers appropriate, including the offender’s previous criminal record and the other circumstances relating to him or her.

(3) There is, by virtue of this subsection, conferred on the court power to make, as part of the offender’s sentence, a post-release (restrictions on certain activities) order in relation to him or her, that is to say, an order imposing one or more (and no other) of the following restrictions and conditions:

- (a) restrictions on the offender’s movements, actions or activities;
- (b) conditions subject to which the offender may engage in any activity;

- (c) restrictions on the offender's association with others or conditions subject to which the offender may associate with others,

being restrictions and conditions, as to both their nature and extent, that—

- (i) are determined by the court to be no more than is reasonably necessary to be imposed in the public interest, and
- (ii) fall into a category of restrictions and conditions specified in a scheme made under subsection (10).

(4) A post-release (restrictions on certain activities) order may be made for such period, not exceeding 7 years, as the court considers appropriate.

(5) A post-release (restriction of certain activities) order in relation to the offender shall come into force on the date on which—

- (a) the sentence of imprisonment imposed on him or her in respect of the offence concerned expires or, as the case may be, his or her remission from the sentence begins, or
- (b) if the offender is imprisoned in respect of another offence, the date on which that sentence of imprisonment expires or, as the case may be, his or her remission from that sentence begins,

whichever is the later.

(6) Where a post-release (restriction of certain activities) order is made (whether or not it is in force), the court that made the order may, if it so thinks proper, on the application of the offender vary or revoke the order if it is satisfied that by reason of such matters or circumstances specified in the application that have arisen or occurred since the making of the order that it should be varied or revoked.

(7) An application under subsection (6) shall be made on notice to an inspector of the Garda Síochána of the district in which the offender ordinarily resided at the time that the order was made or, if appropriate, an inspector of the Garda Síochána of the district in which the home of the offender is located at the time of the application.

(8) A person who fails, without reasonable cause, to comply with a post-release (restriction of certain activities) order shall be guilty of an offence and shall be liable on summary conviction

to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(9) Nothing in this section shall affect any other order, restriction or obligation, or any condition attaching thereto, to which the offender is subject whether made or imposed under statute (including section 26) or otherwise apart from this section while a post-release (restrictions of certain activities) order is in force.

(10) (a) As soon as practicable, but not later than 6 months, after the commencement of *section 14* of the *Criminal Justice (Amendment) Act 2009*, the Minister shall prepare a scheme specifying 2 or more categories of restrictions and conditions that may be imposed by post-release (restrictions on certain activities) orders and lay a draft of the scheme before each House of the Oireachtas.

(b) If the draft of the scheme, so laid, is approved by a resolution passed by each such House, the Minister shall make the scheme as soon as practicable thereafter.

(11) In this section ‘home’, in relation to the offender, means his or her sole or main residence or, if he or she has no such residence, his or her most usual place of abode or, if he or she has no such abode, the place which he or she regularly visits.”.

(2) Schedule 2 to the Act of 2007 is amended, in paragraph 9, by substituting the following subparagraphs for subparagraph (b):

“(b) section 71A (directing activities of a criminal organisation);

(ba) section 72 (offence to participate in, or contribute to, certain activities);”.

Amendment of Bail Act 1997.

15.—The Schedule to the Bail Act 1997 is amended, in paragraph 28A, by inserting “71A,” after “71,”.

Increase of penalty for intimidation of witnesses, jurors, etc.

16.—Section 41 of the Act of 1999 is amended by substituting, in subsection (5)(b), “15 years” for “10 years”.

Amendment of Criminal Procedure Act 1967.

17.—The Criminal Procedure Act 1967 is amended—

(a) in section 13(1), by inserting “71A,” after “or an offence under section 71,”, and

(b) in section 29(1), by inserting, in paragraph (l), “71A,” after “an offence under section 71,”.

PART 3

OFFENCES UNDER CERTAIN ENACTMENTS: PROVISION FOR EXTRA-
TERRITORIAL EFFECT

18.—(1) Section 7 of the Act of 1939 is amended—

Amendment of
section 7 of Act of
1939.

(a) in subsection (1), by inserting “(whether in or outside the State)” after “Every person who”, and

(b) in subsection (2), by inserting “(whether in or outside the State)” after “Every person who”.

(2) Section 7 of the Act of 1939 is further amended by inserting the following after subsection (2):

“(3) A person shall be guilty of an offence under this section for conduct that the person engages in outside the State only if—

(a) the conduct takes place on board an Irish ship (within the meaning of section 9 of the Mercantile Marine Act 1955),

(b) the conduct takes place on an aircraft registered in the State,

(c) the person is an Irish citizen, or

(d) the person is ordinarily resident in the State.

(4) A person who has his principal residence in the State for the 12 months immediately preceding the commission of an offence under subsection (1) or (2) of this section is, for the purposes of subsection (3)(d) of this section, ordinarily resident in the State on the date of the commission of the offence.”.

19.—(1) Section 7 of the Act of 1997 is amended by inserting the following subsection after subsection (1):

Amendment of
sections 7 and 8 of
Act of 1997.

“(1A) Any person who, outside the State, aids, abets, counsels or procures the commission of an indictable offence in the State shall be liable to be indicted, tried and punished as a principal offender if—

(a) the person does so on board an Irish ship,

(b) the person does so on an aircraft registered in the State,

(c) the person is an Irish citizen, or

(d) the person is ordinarily resident in the State.”.

(2) Section 7 of the Act of 1997 is further amended—

(a) in subsection (2), by inserting “, whether in or outside the State,” after “any act”,

(b) by inserting the following subsection after subsection (2):

“(2A) A person shall be guilty of an offence under subsection (2) for doing an act outside the State only if—

- (a) the person does so on board an Irish ship,
- (b) the person does so on an aircraft registered in the State,
- (c) the person is an Irish citizen, or
- (d) the person is ordinarily resident in the State.”,

and

(c) by inserting the following subsections after subsection (7):

“(8) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence referred to in subsection (1A) or an offence under subsection (2) is, for the purposes of subsection (1A)(d) or (in the case of an offence under subsection (2)) subsection (2A)(d), taken to be ordinarily resident in the State on the date of the commission of the offence.

(9) In this section ‘Irish ship’ has the meaning it has in section 9 of the Mercantile Marine Act 1955.”.

(3) Section 8 of the Act of 1997 is amended, in subsection (1), by substituting “accepts (or agrees to accept), whether in or outside the State, for not disclosing that information any consideration” for “accepts or agrees to accept for not disclosing that information any consideration”.

(4) Section 8 of the Act of 1997 is further amended—

(a) by inserting the following after subsection (1):

“(1A) A person shall be guilty of an offence under subsection (1) for conduct that the person engages in outside the State only if—

- (a) the conduct takes place on board an Irish ship,
- (b) the conduct takes place on an aircraft registered in the State,
- (c) the person is an Irish citizen, or
- (d) the person is ordinarily resident in the State.”,

and

(b) by inserting the following subsections after subsection (4):

“(5) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under subsection (1) is, for the purposes of subsection (1A)(d), ordinarily resident in the State on the date of the commission of the offence.

(6) In this section ‘Irish ship’ has the same meaning as it has in section 7.”.

20.—Section 41 of the Act of 1999 is amended—

Amendment of section 41 (substantive elements of offence) of Act of 1999.

- (a) in subsection (1)(a), by substituting “who (whether in or outside the State) harms” for “who harms”, and
- (b) by inserting the following subsections after subsection (3):

“(3A) A person shall be guilty of an offence under this section for conduct that the person engages in outside the State only if—

- (a) the conduct takes place on board an Irish ship (within the meaning of section 9 of the Mercantile Marine Act 1955),
- (b) the conduct takes place on an aircraft registered in the State,
- (c) the person is an Irish citizen, or
- (d) the person is ordinarily resident in the State.

(3B) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under subsection (1) is, for the purposes of subsection (3A)(d), ordinarily resident in the State on the date of the commission of the offence.”.

PART 4

AMENDMENTS CONCERNING DETENTION AND RE-ARREST POWERS

21.—(1) Section 30 of the Act of 1939 is amended—

Amendment of sections 30 and 30A of Act of 1939.

- (a) by inserting the following subsection after subsection (3):

“(3A) If at any time during the detention of a person pursuant to this section a member of the Garda Síochána, with reasonable cause, suspects that person of having committed an offence (the ‘other offence’) referred to in subsection (1) of this section, being an offence other than the offence to which the detention relates, and—

- (a) the member of the Garda Síochána then in charge of the Garda Síochána station, or
- (b) in case the person is being detained in a place of detention, other than a Garda Síochána station, an officer of the Garda Síochána not below the rank of inspector who is not investigating the offence to which the detention relates or the other offence,

has reasonable grounds for believing that the continued detention of the person is necessary for the proper investigation of the other offence, the person may continue to be

detained in relation to the other offence as if that offence was the offence for which the person was originally detained, but nothing in this subsection authorises the detention of the person for a period that is longer than the period which is authorised by or under the other provisions of this section.”,

(b) by inserting the following subsection after subsection (4B):

“(4BA) (a) Without prejudice to paragraph (b) of this subsection, where a judge hearing an application under subsection (4) of this section is satisfied, in order to avoid a risk of prejudice to the investigation concerned, that it is desirable to do so, he may—

- (i) direct that the application be heard otherwise than in public, or
- (ii) exclude from the Court during the hearing all persons except officers of the Court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons as the Court may permit to remain.

(b) On the hearing of an application under subsection (4) of this section, the judge may, of his own motion or on application by the officer of the Garda Síochána making the application under that subsection (4), where it appears that—

- (i) particular evidence to be given by any member of the Garda Síochána during the hearing (including evidence by way of answer to a question asked of the member in cross-examination) concerns steps that have been, or may be, taken in the course of any inquiry or investigation being conducted by the Garda Síochána with respect to the suspected involvement of the person to whom the application relates, or any other person, in the commission of the offence to which the detention relates or any other offence, and
- (ii) the nature of those steps is such that the giving of that evidence concerning them could prejudice, in a material respect, the proper conducting of any foregoing inquiry or investigation,

direct that, in the public interest, the particular evidence shall be given in the absence of every person, including the person to whom the application relates and any legal representative (whether of that person or the applicant), other than—

- (I) the member or members whose attendance is necessary for the purpose of giving the evidence to the judge; and
 - (II) if the judge deems it appropriate, such one or more of the clerks of the Court as the judge determines.
- (c) If, having heard such evidence given in that manner, the judge considers the disclosure of the matters to which that evidence relates would not have the effect referred to in paragraph (b)(ii) of this subsection, the judge shall direct the evidence to be re-given in the presence of all the other persons (or, as the case may be, those of them not otherwise excluded from the Court under paragraph (a) of this subsection).
- (d) No person shall publish or broadcast or cause to be published or broadcast any information about an application under subsection (4) of this section other than a statement of—
- (i) the fact that the application has been made by the Garda Síochána in relation to a particular investigation, and
 - (ii) any decision resulting from the application.
- (e) If any matter is published or broadcast in contravention of paragraph (d) of this subsection, the following persons, namely—
- (i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
 - (ii) in the case of any other publication, the person who publishes it, and
 - (iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,
- shall be guilty of an offence and shall be liable—
- (I) on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or
 - (II) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.
- (f) In this subsection—

‘broadcast’ means the transmission, relaying or distribution by wireless telegraphy, cable or the internet of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

‘publish’ means publish, other than by way of broadcast, to the public or a portion of the public.

(4BB) Save where any rule of law requires such an issue to be determined by the Court, in an application under subsection (4) of this section no issue as to the lawfulness of the arrest or detention of the person to whom the application relates may be raised.

(4BC) (a) In an application under subsection (4) of this section it shall not be necessary for a member of the Garda Síochána, other than the officer making the application, to give oral evidence for the purposes of the application and the latter officer may testify in relation to any matter within the knowledge of another member of the Garda Síochána that is relevant to the application notwithstanding that it is not within the personal knowledge of the officer.

(b) However, the Court hearing such an application may, if it considers it to be in the interests of justice to do so, direct that another member of the Garda Síochána give oral evidence and the Court may adjourn the hearing of the application for the purpose of receiving such evidence.”

(c) by substituting the following subsection for subsection (4D):

“(4D) If—

(a) an application is to be made, or is made, under subsection (4) of this section for a warrant authorising the detention for a further period of a person detained pursuant to a direction under subsection (3) of this section, and

(b) the period of detention under subsection (3) of this section has not expired at the time of the arrival of the person concerned at the court house for the purposes of the hearing of the application but would, but for this subsection, expire before, or during the hearing (including, if such should occur, any adjournment of the hearing),

it shall be deemed not to expire until the final determination of the application; and, for purposes of this subsection—

- (i) a certificate signed by the court clerk in attendance at the court house concerned stating the time of the arrival of the person concerned at that court house shall be evidence, until the contrary is shown, of the time of that person's arrival there;
- (ii) 'court house' includes any venue at which the hearing of the application takes place."

(2) Section 30A of the Act of 1939 is amended by substituting the following subsections for subsection (1):

"(1) Where a person arrested on suspicion of having committed an offence is detained pursuant to section 30 of this Act and is released without any charge having been made against him, he shall not—

- (a) be arrested again in connection with the offence to which the detention related, or
- (b) be arrested for any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he was arrested, suspected, or ought reasonably to have suspected, him of having committed,

except under the authority of a warrant issued by a judge of the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that either of the following cases apply, namely—

- (i) further information has come to the knowledge of the Garda Síochána since the person's release as to his suspected participation in the offence for which his arrest is sought,
- (ii) notwithstanding that the Garda Síochána had knowledge, prior to the person's release, of the person's suspected participation in the offence for which his arrest is sought, the questioning of the person in relation to that offence, prior to his release, would not have been in the interests of the proper investigation of the offence.

(1A) An application for a warrant under this section shall be heard otherwise than in public."

(3) Section 30A of the Act of 1939 is further amended, in subsection (2)(b), by substituting "(4B), (4BA), (4BB), (4BC)" for "(4B)".

22.—(1) Section 2 of the Act of 1996 is amended—

- (a) in subsection (2)(b), by substituting 'superintendent' for 'chief superintendent',
- (b) by inserting the following subsections after subsection (3):

"(3A) (a) Without prejudice to paragraph (b), where a judge hearing an application under subsection

Amendment of sections 2, 4, 5 and 11 of Act of 1996.

(2) is satisfied, in order to avoid a risk of prejudice to the investigation concerned, that it is desirable to do so, he or she may—

- (i) direct that the application be heard otherwise than in public, or
 - (ii) exclude from the Court during the hearing all persons except officers of the Court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons as the Court may permit to remain.
- (b) On the hearing of an application under subsection (2), the judge may, of his or her own motion or on application by the officer of the Garda Síochána making the application under subsection (2), where it appears that—
- (i) particular evidence to be given by any member of the Garda Síochána during the hearing (including evidence by way of answer to a question asked of the member in cross-examination) concerns steps that have been, or may be taken, in the course of any inquiry or investigation being conducted by the Garda Síochána with respect to the suspected involvement of the person to whom the application relates, or any other person, in the commission of the offence to which the detention relates or any other offence, and
 - (ii) the nature of those steps is such that the giving of that evidence concerning them could prejudice, in a material respect, the proper conducting of any foregoing inquiry or investigation,
- direct that, in the public interest, the particular evidence shall be given in the absence of every person, including the person to whom the application relates and any legal representative (whether of that person or the applicant), other than—
- (I) the member or members whose attendance is necessary for the purpose of giving the evidence to the judge; and
 - (II) if the judge deems it appropriate, such one or more of the clerks or registrars of the Court as the judge determines.
- (c) If, having heard such evidence given in that manner, the judge considers the disclosure of the matters to which that evidence relates would not have the effect referred to in paragraph (b)(ii), the judge shall direct the evidence to be re-given in the presence of all the other persons (or, as the case may be, those of

them not otherwise excluded from the Court under paragraph (a)).

(d) No person shall publish or broadcast or cause to be published or broadcast any information about an application under subsection (2) other than a statement of—

(i) the fact that the application has been made by the Garda Síochána in relation to a particular investigation, and

(ii) any decision resulting from the application.

(e) If any matter is published or broadcast in contravention of paragraph (d), the following persons, namely—

(i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(ii) in the case of any other publication, the person who publishes it, and

(iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,

shall be guilty of an offence and shall be liable—

(I) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(II) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

(f) Where an offence under this subsection has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(g) Where the affairs of a body corporate are managed by its members, paragraph (f) 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.

(h) In this subsection—

‘broadcast’ means the transmission, relaying or distribution by wireless telegraphy, cable or the internet of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

‘publish’ means publish, other than by way of broadcast, to the public or a portion of the public.

(3B) Save where any rule of law requires such an issue to be determined by the Court, in an application under subsection (2) no issue as to the lawfulness of the arrest or detention of the person to whom the application relates may be raised.

(3C) (a) In an application under subsection (2) it shall not be necessary for a member of the Garda Síochána, other than the officer making the application, to give oral evidence for the purposes of the application and the latter officer may testify in relation to any matter within the knowledge of another member of the Garda Síochána that is relevant to the application notwithstanding that it is not within the personal knowledge of the officer.

(b) However, the Court hearing such an application may, if it considers it be in the interests of justice to do so, direct that another member of the Garda Síochána give oral evidence and the Court may adjourn the hearing of the application for the purpose of receiving such evidence.”,

(c) by substituting the following subsection for subsection (7A):

“(7A) Notwithstanding subsections (2) and (7), if—

(a) an application is to be made, or is made, under subsection (2) for a warrant authorising the detention for a further period of a person detained under that subsection, and

(b) the period of detention under that subsection has not expired at the time of the arrival of the person concerned at the court house for the purposes of the hearing of the application but would, but for this subsection, expire before, or during the hearing (including, if such should occur, any adjournment of the hearing),

it shall be deemed not to expire until the final determination of the application; and, for purposes of this subsection—

- (i) a certificate signed by the court clerk or registrar in attendance at the court house concerned stating the time of the arrival of the person concerned at that court house shall be evidence, until the contrary is shown, of the time of that person's arrival there;
- (ii) 'court house' includes any venue at which the hearing of the application takes place.”.

(2) Section 4 of the Act of 1996 is amended by substituting the following subsection for subsection (1):

“(1) Where a person arrested on suspicion of having committed an offence is detained pursuant to section 2 and is released without any charge having been made against him or her, he or she shall not—

- (a) be arrested again in connection with the offence to which the detention related, or
- (b) be arrested for any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested suspected, or ought reasonably to have suspected, him or her of having committed,

except on the authority of a warrant issued by a judge of the Circuit Court or the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that either of the following cases apply, namely—

- (i) further information has come to the knowledge of the Garda Síochána since the person's release as to the person's suspected participation in the offence for which his or her arrest is sought,
- (ii) notwithstanding that the Garda Síochána had knowledge, prior to his or her release, of the person's suspected participation in the offence for which his or her arrest is sought, the questioning of the person in relation to that offence, prior to his or her release, would not have been in the interests of the proper investigation of the offence.

(1A) An application for a warrant under this section shall be heard otherwise than in public.”.

(3) Section 5 of the Act of 1996 is amended by inserting “4(8B),” after “4(8A),”.

(4) Section 11 of the Act of 1996 is repealed and, accordingly, sections 2, 3, 4, 5 and 6 of that Act (being the sections to which that section 11 related) shall continue in operation indefinitely.

Amendment of sections 50, 51 and 52 of Act of 2007.

23.—(1) Section 50 of the Act of 2007 is amended in subsection (1)—

- (a) by substituting, in paragraph (c), “Act of 1925,” for “Act of 1925, or”,
- (b) by substituting, in paragraph (d), “firearm, or” for “firearm.”, and
- (c) by inserting the following paragraph after paragraph (d):

“(e) an offence under Part 7 of the Criminal Justice Act 2006.”.

(2) Section 50 of the Act of 2007 is further amended—

(a) by inserting the following subsection after subsection (4):

“(4A) (a) Without prejudice to paragraph (b), where a judge hearing an application under subsection (3) is satisfied, in order to avoid a risk of prejudice to the investigation concerned, that it is desirable to do so, he or she may—

- (i) direct that the application be heard otherwise than in public, or
- (ii) exclude from the Court during the hearing all persons except officers of the Court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons as the Court may permit to remain.

(b) On the hearing of an application under subsection (3), the judge may, of his or her own motion or on application by the member of the Garda Síochána making the application under subsection (3), where it appears that—

- (i) particular evidence to be given by any member of the Garda Síochána during the hearing (including evidence by way of answer to a question asked of the member in cross-examination) concerns steps that have been, or may be, taken in the course of any inquiry or investigation being conducted by the Garda Síochána with respect to the suspected involvement of the person to whom the application relates, or any other person, in the commission of the offence to which the detention relates or any other offence, and
- (ii) the nature of those steps is such that the giving of that evidence concerning them could prejudice, in a material respect, the proper conducting of any foregoing inquiry or investigation,

direct that, in the public interest, the particular evidence shall be given in the absence of every

person, including the person to whom the application relates and any legal representative (whether of that person or the applicant), other than—

- (I) the member or members whose attendance is necessary for the purpose of giving the evidence to the judge; and
 - (II) if the judge deems it appropriate, such one or more of the clerks or registrars of the Court as the judge determines.
- (c) If, having heard such evidence given in that manner, the judge considers the disclosure of the matters to which that evidence relates would not have the effect referred to in paragraph (b)(ii), the judge shall direct the evidence to be re-given in the presence of all the other persons (or, as the case may be, those of them not otherwise excluded from the Court under paragraph (a)).
- (d) No person shall publish or broadcast or cause to be published or broadcast any information about an application under this section other than a statement of—
- (i) the fact that the application has been brought by a named person in relation to a particular investigation, and
 - (ii) any decision resulting from the application.
- (e) If any matter is published or broadcast in contravention of paragraph (d), the following persons, namely—
- (i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
 - (ii) in the case of any other publication, the person who publishes it, and
 - (iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,

shall be guilty of an offence and shall be liable—

- (I) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(II) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

(f) Where an offence under this subsection has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(g) Where the affairs of a body corporate are managed by its members, paragraph (f) 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.

(h) In this subsection—

‘broadcast’ means the transmission, relaying or distribution by wireless telegraphy, cable or the internet of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

‘publish’ means publish, other than by way of broadcast, to the public or a portion of the public.

(4B) Save where any rule of law requires such an issue to be determined by the Court, in an application under subsection (3) no issue as to the lawfulness of the arrest or detention of the person to whom the application relates may be raised.

(4C) (a) In an application under subsection (3) it shall not be necessary for a member of the Garda Síochána, other than the member making the application, to give oral evidence for the purposes of the application and the latter member may testify in relation to any matter within the knowledge of another member of the Garda Síochána that is relevant to the application notwithstanding that it is not within the personal knowledge of the member.

(b) However, the Court hearing such an application may, if it considers it to be in the interests of justice to do so, direct that another member of the Garda Síochána give oral evidence and the Court may adjourn the hearing of the application for the purpose of receiving such evidence.”

(b) by substituting the following subsection for subsection (9):

“(9) Notwithstanding subsections (3) and (8), if—

- (a) an application is to be made, or is made, under subsection (3) for a warrant authorising the detention for a further period of a person detained under that subsection, and
- (b) the period of detention under that subsection has not expired at the time of the arrival of the person concerned at the court house for the purposes of the hearing of the application but would, but for this subsection, expire before, or during the hearing (including, if such should occur, any adjournment of the hearing),

it shall be deemed not to expire until the final determination of the application; and, for purposes of this subsection—

- (i) a certificate signed by the court clerk or registrar in attendance at the court house concerned stating the time of the arrival of the person concerned at that court house shall be evidence, until the contrary is shown, of the time of that person’s arrival there;
- (ii) ‘court house’ includes any venue at which the hearing of the application takes place.”.

(3) Section 51 of the Act of 2007 is amended by substituting the following subsections for subsection (1):

“(1) Where a person arrested on suspicion of having committed an offence is detained pursuant to section 50 and is released without any charge having been made against him or her, he or she shall not—

- (a) be arrested again in connection with the offence to which the detention related, or
- (b) be arrested for any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested suspected, or ought reasonably to have suspected him or her, of having committed,

except on the authority of a warrant issued by a judge of the Circuit Court or the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that either of the following cases apply, namely:

- (i) further information has come to the knowledge of the Garda Síochána since the person’s release as to his or her suspected participation in the offence for which his or her arrest is sought,
- (ii) notwithstanding that the Garda Síochána had knowledge, prior to the person’s release, of the person’s suspected participation in the offence for which his

or her arrest is sought, the questioning of the person in relation to that offence, prior to his or her release would not have been in the interests of the proper investigation of the offence.

(1A) An application for a warrant under this section shall be heard otherwise than in public.”.

(4) Section 52 of the Act of 2007 is amended by inserting “4(8B),” after “4(8A).”.

Amendment of sections 4, 9 and 10 of Act of 1984.

24.—(1) Section 4 of the Act of 1984 is amended—

(a) by inserting the following subsection after subsection (8A):

“(8B) (a) Where a medical practitioner—

(i) has, at the request of a member of the Garda Síochána, assessed the condition of a person detained pursuant to subsection (2), and

(ii) certifies that the person, although the person’s condition is not such as to require the person’s hospitalisation, is unfit for any questioning for the purpose of the investigation for a specified period,

no questioning of the person shall take place during that period and that period shall be excluded in reckoning a period of detention permitted by this section.

(b) The period that may be specified in a certificate provided under paragraph (a) by a medical practitioner shall not exceed 6 hours.

(c) A certificate may be provided under paragraph (a) on one occasion only in respect of the particular person detained pursuant to subsection (2).”.

and

(b) in subsection (9) by substituting “, (8A) or (8B)” for “or (8A)”.

(2) Section 9 of the Act of 1984 is amended by inserting “4(8B),” after “4(8A).”.

(3) Section 10 of the Act of 1984 is amended by substituting the following subsection for subsection (1):

“(1) Where a person arrested on suspicion of having committed an offence is detained pursuant to section 4 and is released without any charge having been made against him, he shall not—

(a) be arrested again in connection with the offence to which the detention related, or

- (b) be arrested for any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he was arrested suspected, or ought reasonably to have suspected him of having committed,

except on the authority of a warrant issued by a judge of the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that either of the following cases apply, namely:

- (i) further information has come to the knowledge of the Garda Síochána since the person's release as to his suspected participation in the offence for which his arrest is sought, or
- (ii) notwithstanding that the Garda Síochána had knowledge, prior to the person's release, of the person's suspected participation in the offence for which his arrest is sought, the questioning of the person in relation to that offence, prior to his release, would not have been in the interests of the proper investigation of the offence.

A person arrested under that authority shall be dealt with pursuant to section 4.

(1A) An application for a warrant under this section shall be heard otherwise than in public.”.

PART 5

MISCELLANEOUS

25.—The Offences against the State (Amendment) Act 1998 is amended by substituting the following section for section 6:

Directing activities of an unlawful organisation.

“Directing an unlawful organisation.

6.—(1) In this section—

- (a) ‘directs’, in relation to activities, means—
- (i) controls or supervises the activities, or
- (ii) gives an order, instruction or guidance, or makes a request, with respect to the carrying on of the activities;
- (b) ‘serious offence’ means an offence for which a person may be punished by imprisonment for a term of 4 years or more;
- (c) ‘unlawful organisation’ means an organisation in respect of which a suppression order has been made under section 19 of the Act of 1939;

(d) references to activities include references to—

- (i) activities carried on outside the State, and
- (ii) activities that do not constitute an offence or offences.

(2) A person who directs, at any level of the organisation's structure, the activities of an unlawful organisation shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(3) Any statement made orally, in writing or otherwise, or any conduct, by the defendant implying or leading to a reasonable inference that he or she was at a material time directing the activities of an unlawful organisation shall, in proceedings for an offence under this section, be admissible as evidence that the defendant was doing such at that time.

(4) In proceedings under this section, the court or the jury, as the case may be, in determining whether an offence under this section has been committed, may, in addition to any other relevant evidence, also consider—

- (a) any evidence of a pattern of behaviour on the part of the defendant consistent with his or her having directed the activities of the organisation concerned at the material time, and
- (b) without limiting paragraph (a) or subsection (3)—
 - (i) whether the defendant has received any benefit from the organisation concerned, and
 - (ii) evidence as to the possession by the defendant of such articles or documents or other records as would give rise to a reasonable suspicion that such articles, documents or other records were in his or her possession or control for a purpose connected with directing the activities of the organisation concerned.

(5) Any document or other record emanating or purporting to emanate from the organisation concerned from which there can be inferred—

- (a) either—

(i) the giving, at the time concerned, of an instruction, order or guidance by the defendant to any person involved in the organisation, or

(ii) the making, at that time, by the defendant of a request of a person so involved,

or

(b) the seeking, at that time, by a person so involved of assistance or guidance from the defendant,

shall, in proceedings for an offence under this section, be admissible as evidence that the defendant was directing the activities of the organisation concerned at the material time.

(6) The expression ‘other record’ in this section shall receive a like construction to that which is provided for by section 2 of the Act of 1939 with respect to the expression ‘document’.”.

26.—An application under any enactment to a court, or a judge of a court, for a search warrant shall be heard otherwise than in public.

Search warrant applications to be heard otherwise than in public.



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**AN ACHT UM CHEARTAS COIRIÚIL (LEASÚ) 2009
CRIMINAL JUSTICE (AMENDMENT) ACT 2009**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Act

The primary purpose of this Act is to introduce additional measures targeted at combating organised crime. The Act addresses the increasing levels of violence by targeting those who direct the activities of criminal organisations and those who participate in the activities of such organisations. In doing so, the Act will also meet obligations which arise under the UN Convention on Transnational Organised Crime. In addition to introducing greater penalties for a number of offences, it provides for the hearing by the Special Criminal Court of specified organised crime offences unless the Director of Public Prosecutions directs otherwise. The Act also amends Garda detention, re-arrest and search powers.

Provisions of the Act

PART 1

Preliminary and General

Part 1 sets down the short title of the Act and defines certain terms used in the Act.

Section 1 provides that the short title of the Act will be Criminal Justice (Amendment) Act 2009.

Section 2 defines certain terms used in the Act.

PART 2

Organised Crime

Section 3 amends section 70 of the Criminal Justice Act 2006. Subsection (1) amends the definitions of “criminal organisation” and “structured group” contained in that section. Subsection (2) defines “a person ordinarily resident in the State”.

Section 4 amends section 71 of the Act by substituting the words “person ordinarily resident in the State” for the words “stateless

person habitually resident in the State”. This amendment harmonises section 71 with changes being made to other sections of the 2006 Act.

Section 5 inserts a new section 71A into Part 7 of the Criminal Justice Act 2006. Subsection (1) defines “directs” and provides that “activities” includes activities that do not constitute criminal offences, or that take place outside the State. Subsection (2) of the new section 71A makes it an offence for any person to direct, at any level of a criminal organisation, the activities of such an organisation. The maximum penalty following conviction on indictment is imprisonment for life.

The section seeks to target those in a criminal organisation who give the orders. Some of these people may not themselves directly participate in the commission of criminal offences. By including the words “at any level of the organisation’s structure” in subsection (2), it is ensured that persons directing the activities need not necessarily be one of those at the top of the organisation or that they be shown to be such. Subsection (3) of the new offence permits any statement or conduct of the accused, causing a reasonable inference that the person was directing the activities of a criminal organisation, to be admissible as evidence. Subsection (4) provides guidance for a court or jury, as the case may be, in determining whether or not an offence has been committed. Subsection (5) makes provision for inferences that may be drawn from documentary evidence. Subsection (6) provides that the definition of “document or record” is as defined in section 71B (as inserted by section 7).

Section 6 amends the Criminal Justice Act 2006 by substituting a new section for the existing section 72 which relates to participation in organised crime. The new section will simplify the existing offence of participation in a criminal organisation. Subsection (1) of the new section, makes it an offence to participate in any activity in the knowledge that doing so could reasonably, or reckless as to whether such participation would, enhance or facilitate the commission of an offence by a criminal organisation. Subsection (2) provides a penalty where convicted of this offence of a fine and/or up to 15 years imprisonment. Subsection (3) confirms that the commission of a serious offence includes an act done outside the State. Subsection (4) provides that it is not necessary to prove that an offence has actually been carried out or that the defendant actually enhanced or facilitated an offence, or that the defendant knew the specific nature of any offence. Subsection (5) provides that the court may consider evidence whether or not the person uses a name, word or symbol which is associated with the organisation, or receives any benefit from the organisation. Subsection (6) provides that certain incriminating articles can be used as evidence that the defendant’s state of mind was such that he or she had a deliberate intention to commit the offence. The articles or items in question are listed in a Table to the section.

Section 7 inserts a new section after section 71 of the Criminal Justice Act 2006 to provide for proof of the evidence of the existence of a criminal organisation. This will enhance the ability to bring prosecutions for offences of directing or participating in organised crime. Subsections (1) and (2) allow for the admissibility of expert opinion evidence of a member, or former member, of the Garda Síochána (referred to as the “appropriate expert”) in determining the existence of a criminal organisation. Subsection (3) further details the types of evidence which may be put forward by the appropriate expert, including evidence of previous convictions of gang members for arrestable offences. Subsections (4) and (5) provide that

documents and records relevant to the criminal organisation are admissible as evidence.

Section 8 provides, at subsection (1), a declaration that the ordinary courts are inadequate for the purpose of the effective administration of justice and the preservation of public peace in relation to the offences contained in Part 7 of the Criminal Justice Act 2006 (excluding the conspiracy offence under section 71). This provision is not permanent and, depending on the threat posed by organised crime gangs, will have to be renewed on a regular basis. Subsection (2) has the effect of scheduling the offences specified in subsection (1) for the purpose of the provisions under the Offences against the State Act 1939 relating to the use of the Special Criminal Court. It allows the Special Criminal Court to hear prosecutions for the offence in question without prejudice, *inter alia*, to the power of the DPP to direct that a person not be sent forward for trial by that court (subsection (3)). Subsections (4) to (6) are the renewal provisions providing for the duration of this section. Subsection (4) sets down the expiry of operation of the section after one year unless a resolution continuing the section has been passed by both Houses of the Oireachtas. Subsection (5) allows further resolutions permitting, as needed, the continuation in force of the section. Under subsection (6), the Minister for Justice, Equality and Law Reform shall, before a resolution is passed by the Houses of the Oireachtas, place a report before each House concerning the operation of the provision to date.

Section 9 provides a new section 72A in the Criminal Justice Act 2006. Subsection (1) of this new provision permits inferences to be drawn as a result of the failure, in particular circumstances, of an accused to answer any question material to the investigation of the offence. It will apply to the organised crime offences under Part 7 of the Criminal Justice Act 2006 including the additional offence of directing the activities of a criminal organisation introduced in this Act. The remaining provisions of the section contain safeguards common to other similar existing provisions in Irish law such as the accused must be informed of the effect of a failure to answer a question; a reasonable opportunity must be given to the accused to consult a solicitor and the questioning is recorded unless the accused consents otherwise. Subsection (7) sets out the meaning of “any question material to the investigation of the offence” and essentially such questions are linked to the evidence provisions of the organised crime offences. Subsection (9) confirms that the section shall not apply in relation to a failure to answer a question if the failure occurred before the passing of the section.

Section 10 amends section 73 (*Commission of an offence for a criminal organisation*) of the Criminal Justice Act 2006, to increase the penalty for that offence from 10 to 15 years.

Section 11 amends section 74 of the Criminal Justice Act 2006 to apply the jurisdiction provisions of section 74 (*Proceedings relating to offences committed outside the State*) to the offences of directing and participating in organised crime.

Section 12 creates a new provision after section 74 of the Criminal Justice Act 2006 establishing as an aggravating factor, for the purpose of sentencing, the fact that a serious offence was committed within the framework of a criminal organisation. This provision, in addition to providing an additional tool for the punishment of offences involving organised crime, fulfils an obligation arising under Article 3.2 of the European Union Council Framework Decision of 24 October 2008 on the fight against organised crime.

Section 13 confirms that a court may exclude evidence if, in the opinion of the court, the prejudicial effect of evidence outweighs its probative value.

Section 14 creates a new provision in the Criminal Justice Act 2007, introducing post-release (restriction on certain activities) orders which can be applied to persons committing certain offences. These orders may apply, in accordance with subsection (1), to organised crime offences under Part 7 of the Criminal Justice Act 2006 and to the offences listed in Schedule 2 to the 2007 Act. Schedule 2 lists offences to which the sentencing provisions contained in Part 3 of the 2007 Act apply, namely the provisions on repeat offending (section 25) and monitoring and protection of persons orders (section 26). The court-issued order will apply following release from prison for the purpose of restricting the offender including restrictions on his or her movements, actions, activities or association with others. The order may also involve the imposition of conditions on an offender as to, for example, their engagement in any activity (subsection (3)). The imposition of an order under this section is subject to the public interest and other relevant matters before the court (subsection (2)). Under subsection (4), an order may apply for a period up to 7 years following release. Also under this section, an offender may apply to the court to vary or revoke the order. Failure to comply with a post-release (restriction of certain activities) order is an offence liable on conviction to a fine of up to €5,000 and/or imprisonment for up to 12 months. Subsection (10) requires the Minister for Justice, Equality and Law Reform to prepare, within six months, a scheme specifying two or more categories of restrictions and conditions that may be imposed by a post-release (restrictions on movement) order. The scheme must be approved by a resolution of both Houses.

Section 15 amends the Schedule to the Bail Act 1997. The Schedule lists the offences that are defined as “serious offences” and section 2 of the Bail Act provides for the circumstances in which bail may be refused for such offences. As a result of this amendment, the new directing offence under *section 5* will also be added to the Bail Schedule.

Section 16 increases the penalty for the offence of intimidation of witnesses, jurors or others from 10 years to 15 years.

Section 17 provides that the procedure available under section 13 of the Criminal Procedure Act 1967 whereby the District Court may, in the circumstances where an accused person pleads guilty to an indictable offence, deal with that offence summarily or send the accused forward for sentencing shall not apply to the directing the activities of a criminal organisation offence introduced by this Act.

Section 29 of the Criminal Procedure Act 1967 is also amended to provide that a person charged with the directing offence may be admitted to bail only by the High Court. This is consistent with the treatment of the other offences under Part 7 of the Criminal Justice Act 2006.

PART 3

Offences under certain enactments; provisions for extra-territorial effect

Section 18 provides for jurisdiction over obstruction of justice offences relating to interference with the actions of the judiciary or

law enforcement authorities and where committed on board an Irish ship, aircraft, or such offences committed by an Irish citizen/resident while in another jurisdiction. This is an important new provision to ensure that persons involved in organised crime can be pursued in respect of transnational offences. These provisions also meet our obligations under the UN Convention against Transnational Organised Crime.

Section 19 provides for jurisdiction over the offence of inducement of witnesses to give false testimony where committed on board an Irish ship, aircraft, or such an offence committed by an Irish citizen/resident while in another jurisdiction. This provision ensures that persons involved in organised crime can be pursued in respect of transnational offences. These provisions also meet our obligations under the UN Convention against Transnational Organised Crime.

Section 20 provides for jurisdiction over the offence of intimidation of witnesses, jurors or others where committed on board an Irish ship, aircraft, or such an offence committed by an Irish citizen/resident while in another jurisdiction. As with sections 18 and 19, this provision meets an obligation under the UN Convention on Transnational Organised Crime.

PART 4

Amendments concerning detention and re-arrest powers

The purpose of this Part is to amend the Garda detention and re-arrest powers contained in:

- the Offences against the State Act 1939,
- the Criminal Justice (Drug Trafficking) Act 1996,
- the Criminal Justice Act 2007, and
- the Criminal Justice Act 1984.

Section 21 amends sections 30 and 30A of the Offences against the State Act 1939, as amended. Subsection (1) amends section 30. Section 30 provides that a person suspected of committing any offence under the 1939 Act or any offence that is scheduled for the purposes of Part V of the Act (i.e. may be tried before the Special Criminal Court) may be detained for up to 72 hours where that is necessary for the proper investigation of the offence in question. The first 48 hours is subject to Garda authorisation and the remaining 24 hours are subject to judicial authorisation.

Paragraph (a) inserts a new subsection (3A) in order to provide that a person detained under section 30 may continue to be detained for an offence other than the offence to which the detention relates. In order for this provision to apply: the “other offence” must come within the category of offences to which section 30 applies; a member of the Garda Síochána must have reasonable cause to suspect the detained person’s involvement in the other offence; and the member in charge of the Garda station or, in the event that the person is detained in a place other than a Garda station as permitted by the section, a member of the Garda Síochána not below the rank of inspector must have reasonable grounds for believing that the continued detention of the person is necessary for the proper investigation of the other offence concerned. The person may not be detained in excess of the maximum allowed i.e. 72 hours. The other statutory detention powers already include a provision along these lines.

Paragraph (b) makes a number of changes to the procedures applying to the extension of time application under section 30(4).

A new subsection (4BA) is inserted in order to minimise the risk of prejudice to the criminal investigation concerned arising from the disclosure of information during the hearing of the extension of time application. The judge is given discretion: to direct that the application be heard otherwise than in public; to limit attendance at the hearing to the persons directly concerned with the application, officers of the court and bona fide representatives of the Press; and to direct that certain information be disclosed in the absence of the suspect and legal representatives. The new subsection also prohibits the publication or broadcasting of any information about an application under subsection (4) other than the fact that the application has been made by the Gardaí in relation to a particular investigation and the decision on the application. Breach of this prohibition is a criminal offence.

A new subsection (4BB) is inserted in order to make it clear that the lawfulness of the arrest or detention of the suspect is not normally a matter to be raised during the hearing of an application for an extension of time. Such matters are properly the subject of a habeas corpus application to the High Court.

A new subsection (4BC) is inserted in order to provide that the officer of the Garda Síochána making the application for an extension of time (who must be a superintendent or above) may give evidence of matters related to the application not within his/her personal knowledge but within the personal knowledge of another member i.e. hearsay evidence may be given by the applicant officer. The judge hearing the application may in the interests of justice direct another member to attend to give direct oral evidence. The hearing may be adjourned to allow time for the member to attend.

Paragraph (c) substitutes subsection (4D) (inserted by section 187 of the Criminal Justice Act 2006) in order to provide that where the detention period expires while the suspect is at the venue for the hearing of the extension of time application it shall be deemed not to expire until such time as the application is determined by the judge. This provision is subject to the safeguard that the time of arrival of the suspect must be certified by a court clerk in attendance at the venue. As the law stands at present it only addresses the situation where the detention period would expire during the hearing.

Subsection (2) amends section 30A (inserted by section 11 of the Offences against the State (Amendment) Act 1998) in order to add to the grounds on which a court may authorise the re-arrest of a person previously detained under section 30 of the 1939 Act but released without charge. Section 30A provides that a warrant issued by a District Court judge is required to arrest a person again for the offence to which his or her detention related or for an offence which at the time of the first arrest the arresting member suspected or ought reasonably to have suspected the person of having committed. Prior to the enactment of this provision an application for a rearrest warrant could only be grounded on information that had come to the knowledge of the Gardaí after the person's release. This amendment adds an alternative ground viz., that notwithstanding that the Gardaí had knowledge of the person's suspected participation in the commission of the offence for which his or her arrest is sought, prior to his or her release, the questioning of the person in relation to that offence prior to release would not have been in the interests of the proper investigation of the offence. An application for an arrest warrant under this section is to be heard otherwise than in public.

Subsection (3) makes a consequential amendment to section 30A(2) arising from the amendment to section 30.

Section 22 amends sections 2, 4, 5 and 11 of the Criminal Justice (Drug Trafficking) Act 1996.

Subsection (1) amends section 2 of the Act. Section 2 provides that a person suspected of committing a drug trafficking offence (as defined in section 3(1) of the Criminal Justice Act 1994) may be detained for up to 7 days for the proper investigation of the offence — 48 hours under Garda authority and a further 120 hours under judicial authority.

Paragraph (a) amends section 2(2) in order that a member of the Garda Síochána not below the rank of superintendent, rather than a garda not below the rank of chief superintendent may authorise the detention of a suspect for 18 hours beyond the first 6 hour period of detention which is generally authorised by the member in charge.

Paragraph (b) makes a number of changes to the procedures applying to the extension of time application under section 2(2).

A new subsection (3A) is inserted in order to minimise the risk of prejudice to the criminal investigation concerned arising from the disclosure of information during the hearing of the extension of time application. The judge is given discretion: to direct that the application be heard otherwise than in public; to limit attendance at the hearing to the persons directly concerned with the application, officers of the court and bona fide representatives of the Press; and to direct that certain information be disclosed in the absence of the suspect and legal representatives. The new subsection also prohibits the publication or broadcasting of any information about an application under subsection (2) other than the fact that the application has been made by the Gardaí in relation to a particular investigation and the decision on the application. Breach of this prohibition is a criminal offence.

A new subsection (3B) is inserted in order to make it clear that the lawfulness of the arrest or detention of the suspect is not normally a matter to be raised during the hearing of an application for an extension of time. Such matters are properly the subject of a habeas corpus application to the High Court.

A new subsection (3C) is inserted in order to provide that the officer of the Garda Síochána making the application for an extension of time (who must be a chief superintendent or above) may give evidence of matters related to the application not within his/her personal knowledge but within the personal knowledge of another member i.e. hearsay evidence may be given by the applicant officer. The judge hearing the application may in the interests of justice direct another member to attend to give direct oral evidence. The hearing may be adjourned to allow time for the member to attend.

Paragraph (c) substitutes subsection (7A) (inserted by section 10 of the Criminal Justice Act 2006) in order to provide that where the detention period expires while the suspect is at the venue for the hearing of the extension of time application it shall be deemed not to expire until such time as the application is determined by the judge. This provision is subject to the safeguard that the time of arrival of the suspect must be certified by a court clerk in attendance at the venue. As the law stands at present it only addresses the situation where the detention period would expire during the hearing.

Subsection (2) amends section 4 of the Act in order to add to the grounds on which a court may authorise the re-arrest of a person previously detained under section 2 of the Act but released without charge. Section 4 provides a warrant issued by a judge of the District Court or a judge of the Circuit Court is required before such a person may be arrested again for the offence to which his or her detention related or for an offence which at the time of the first arrest the arresting member suspected or ought reasonably to have suspected the person of having committed. Prior to the enactment of this provision an application for a rearrest warrant could only be grounded on information that had come to the knowledge of the Gardaí after the person's release. This amendment adds an alternative ground viz., that notwithstanding that the Gardaí had knowledge of the person's suspected participation in the commission of the offence for which his or her arrest is sought, prior to his or her release, the questioning of the person in relation to that offence prior to release would not have been in the interests of the proper investigation of the offence. An application for an arrest warrant under this section is to be held otherwise than in public.

Subsection (3) amends section 5 of the Act. It applies an amendment to section 4 of the Criminal Justice Act 1984 (see section 24 of the Act) to persons detained under section 2 of the 1996 Act.

Subsection (4) repeals section 11 of the 1996 Act. The effect of this is to make sections 2, 3, 4, 5 and 6 of the Act permanent thereby eliminating the need for these sections to be renewed every two years by a resolution of the Houses of the Oireachtas.

Section 23 amends sections 50, 51 and 52 of the Criminal Justice Act 2007. Section 50 provides that a person suspected of committing: murder involving the use of a firearm or explosive, murder to which section 3 of the Criminal Justice Act 1990 applies (capital murder), an offence under section 15 of the Firearms Act 1925 (possession of firearms with intent to endanger life) or an offence under section 15 of the Non-fatal Offences Against the Person Act 1997 involving the use of a firearm (the offence of false imprisonment) may be detained for up to 7 days for the proper investigation of the offence — 48 hours under Garda authority and a further 120 hours under judicial authority.

Subsection (1) amends section 50(1) of the Act in order to extend the list of offences to which the section applies. The offences under Part 7 of the Criminal Justice Act 2007 (organised crime offences) are added.

Subsection (2) amends section 50 in order to make a number of changes to the procedures applying to the extension of time application under section 50(3).

A new subsection (4A) is inserted in order to minimise the risk of prejudice to the criminal investigation concerned arising from the disclosure of information during the hearing of the extension of time application. The judge is given discretion: to direct that the application be heard otherwise than in public; to limit attendance at the hearing to the persons directly concerned with the application, officers of the court and bona fide representatives of the Press; and to direct that certain information be disclosed in the absence of the suspect and legal representatives. The new subsection also prohibits the publication or broadcasting of any information about an application under subsection (3) other than the fact that the application has been made by the Gardaí in relation to a particular investigation

and the decision on the application. Breach of this prohibition is a criminal offence.

A new subsection (4B) is inserted in order to make it clear that the lawfulness of the arrest or detention of the suspect is not normally a matter to be raised at the hearing of an application for an extension of time. Such matters are properly the subject of a habeas corpus application to the High Court.

A new subsection (4C) is inserted in order to provide that the officer of the Garda Síochána making the application for an extension of time (who must be a chief superintendent or above) may give evidence of matters related to the application not within his/her personal knowledge but within the personal knowledge of another member i.e. hearsay evidence may be given by the applicant officer. The judge hearing the application may in the interests of justice direct another member to attend to give direct oral evidence. The hearing may be adjourned to allow time for the member to attend.

Paragraph (b) substitutes subsection (9) in order to provide that where the detention period expires while the suspect is at the venue for the hearing of the extension of time application it shall be deemed not to expire until such time as the application is determined by the judge. This provision is subject to the safeguard that the time of arrival of the suspect must be certified by a court clerk in attendance at the venue. As the law stands at present it only addresses the situation where the detention period would expire during the hearing.

Subsection (3) amends section 51 in order to add to the grounds on which a court may authorise the re-arrest of a person previously detained under section 50 of the Act but released without charge. Section 51 provides that a warrant issued by a District Court judge or a Circuit Court judge is required to arrest such a person again for the offence to which his or her detention related or for an offence which at the time of the first arrest the arresting member suspected or ought reasonably to have suspected the person of having committed. Prior to the enactment of this provision an application for a rearrest warrant could only be grounded on information that had come to the knowledge of the Gardaí after the person's release. This amendment adds an alternative ground viz., that notwithstanding that the Gardaí had knowledge of the person's suspected participation in the commission of the offence for which his or her arrest is sought, prior to his or her release, the questioning of the person in relation to that offence prior to release would not have been in the interests of the proper investigation of the offence. An application for an arrest warrant under this section shall be heard otherwise than in public.

Subsection (4) amends section 52 of the Act. It applies an amendment to section 4 of the Criminal Justice Act 1984 (see section 23 of the Act) to persons detained under section 50 of the 2007 Act.

Section 24 amends sections 4, 9 and 10 of the Criminal Justice Act 1984. Section 4 of the Act provides that a person may be detained for up to 24 hours subject to Garda authorisation where this is necessary for the proper investigation of an arrestable offence (an offence punishable by 5 years or more). The 24 hour maximum does not include any periods not to be reckoned in its calculation e.g. absences from the Garda station connected with the making of a habeas corpus application (section 4(8A)) and to attend hospital (section 4(8)).

Subsection (1) amends section 4 of the Act by inserting a new subsection (8B). Section 4(8) already provides that any time that a person detained under section 4 is absent from the station for the purpose of hospitalisation is to be excluded in the reckoning of the detention period. New subsection (8B) seeks to address the situation where a detainee is assessed as unfit for questioning but does not require hospitalisation, for example where the detainee is intoxicated. It is proposed that where a medical practitioner certifies that the detainee is unfit for questioning no questioning shall take place during the period certified and that period shall not be included in the reckoning of the detention period. The period cannot exceed 6 hours and a certificate can be provided on one occasion only. Paragraph (b) makes a consequential amendment to section 4(9).

Subsection (2) amends section 9 of the Act. The effect of this is to apply section 4(8B) to persons detained under section 30 of the Offences against the State Act 1939.

Subsection (3) amends section 10 of the Act in order to add to the grounds on which a court may authorise the re-arrest of a person previously detained under section 4 of the Act but released without charge. Section 10 provides that a warrant issued by a District Court judge is required before such a person may be arrested again for the offence to which his or her detention related or for an offence which at the time of the first arrest the arresting member suspected or ought reasonably to have suspected the person of having committed. Prior to the enactment of this provision an application for a rearrest warrant could only be grounded on information that had come to the knowledge of the Gardaí after the person's release. This amendment adds an alternative ground viz., that notwithstanding that the Gardaí had knowledge of the person's suspected participation in the commission of the offence for which his or her arrest is sought, prior to his or her release, the questioning of the person in relation to that offence prior to release would not have been in the interests of the proper investigation of the offence. An application for an arrest warrant under this section shall be heard otherwise than in public.

PART 5

Miscellaneous

Section 25 amends section 6 of the Offences against the State (Amendment) Act 1998, which deals with the offence of *directing activities of an unlawful organisation*. These amendments are required to ensure consistency with the offence of *directing activities of a criminal organisation* contained in *section 5* of this Act.

Section 26 clarifies that all applications for search warrants whether to a court or a judge are to be heard otherwise than in public.

Financial Implications

The Act may give rise to additional costs insofar as the Act may result in prosecutions of persons accused of offences under it. However, there are no grounds for believing that any significant expenditure will arise.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Iúil, 2009.

Wt. —. 542. 10/09. Cahills. (X54862) Gr. 30-15.