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AN BILLE UM CHEARTAS COIRIUIL, 1967 CRIMINAL JUSTICE BILL, 1967

Mar a tugadh isteach
As Introduced

EXPLANATORY MEMORANDUM

PART I

PRELIMINARY

1. This part makes provision for the short title of the Bill, its coming into operation and the repeal of existing enactments.

Repeals

2. The repeals are set out in the First Schedule of the Bill. Over 120 Acts, covering a period from 1267 to the present century, are listed for total repeal and many others are listed for repeal in part. The object has been to include not only such repeals as are directly consequential on provisions in the Bill but also obsolete provisions that are linked in some way with the subject-matter of the Bill, so as to obviate the need for a separate Statute Law Revision Bill to provide for the formal repeal of these provisions.

3. Amongst the repeals are provisions in different enactments whereby local authorities may be liable to pay witnesses' expenses in certain criminal cases. In practice, the Exchequer has, for many years, accepted almost the entire liability for these expenses, the payments (from the Law Charges Vote) being made in some cases direct to the witnesses and in other cases by way of recoupment to local authorities. Exact figures are not available in respect of payments made by local authorities and not recouped but it may be taken that the total for all local authorities would not exceed £2,000 per annum. The effect of the repeals mentioned will be that local authorities will no longer be liable to pay these witnesses' expenses, even on a recoupment basis.

PART II

TERMINATION OF DISTINCTION BETWEEN FELONY AND MISDEMEANOUR AND RELATED PROVISIONS

4. The term "felony" was formerly used to denote the more serious offences and "misdemeanour" the less serious. In the course of time, the distinction became blurred and anomalies crept in so that nowadays some very serious offences are classified only as misdemeanours while some trivial ones are felonies. The classic contrast is that the stealing of a penny is a felony while fraudulent conversion, no matter how much is involved, is only a misdemeanour. It is no longer the practice, in legislation, to designate offences as felonies or misdemeanours.

5. The death penalty applied to almost all felonies and, at common law, the felon's land and goods became forfeit. With the abolition of the death penalty for most crimes and the substantial abolition of forfeiture by the Forfeiture Act, 1870, the main grounds for the

distinction had gone. Nevertheless, some consequences remain which, while mainly of a procedural nature, complicate the law. These consequences will be referred to again in the comments on particular sections.

Section 5

6. This section proposes to terminate all distinctions between felony and misdemeanour, including mode of trial, and, subject to some exceptions provided later, it proposes that the present law and practice in relation to misdemeanour will apply to all offences.

7. The reference in the section to "mode of trial" is to certain formalities associated with trials for felony such as giving the accused in charge of the jury and asking the prisoner, after conviction, whether he has anything to say why the Court should not pass judgment according to law. These formalities appear to have already fallen into disuse.

8. Some of the distinctions between felonies and misdemeanours arise from the Forfeiture Act, 1870, which, while it substantially abolished forfeitures and disabilities, retained some of them.

9. In particular, section 2 of the 1870 Act provides that any person who has been convicted of treason or felony and sentenced to death or more than twelve months' imprisonment forfeits any "military or naval office or any civil office under the Crown or other public employment or any ecclesiastical benefice" or any position in any "university, college or other corporation" which he may hold and also forfeits any pension or superannuation allowance payable from public funds to which he is entitled. Until he has served his punishment, the conviction also disqualifies him from holding such office subsequently. (There was a similar disqualification in relation to the right to be elected to Parliament and the exercise of the franchise but these provisions have been explicitly repealed in part and appear to be wholly repealed by implication—at all events, they are a dead letter.)

10. Under section 8 of the 1870 Act, a person convicted of treason or felony and sentenced to death or penal servitude (which in practice may be taken to mean a sentence of at least three years in prison) is generally disqualified from suing in a civil action or making a contract while the sentence remains unserved. (Under the Act, the Minister for Justice may appoint an administrator for the convict's property, with very wide powers, including power to pay compensation even where the alleged wrongful act has not been proved in any Court, but the power to appoint an administrator is never exercised nowadays.)

11. The effect of section 5 of the Bill is to render inoperative the disqualifications and disabilities provided for by the 1870 Act and that Act is being formally repealed. (A new provision is being made, however—section 57—permitting a pension payable from public funds to be reduced in order to compensate for any loss to State funds arising from an offence involving fraud or dishonesty on the part of the person concerned.)

12. Another distinction between felonies and misdemeanours that will cease to be operative is one arising from section 21 of the Criminal Law (Ireland) Act, 1828, which (as amended) provides that a person is liable, on a second conviction of felony, to penal servitude for life. That section, however, is not operated in practice. It is being formally repealed.

Section 6

13. In felonies, there are some technical distinctions between principals of the first degree, principals of the second degree and accessories before the fact. In misdemeanours, all of them are treated as principal offenders. The intention of the Bill is to retain the misdemeanour rule and to extend it to cover those offences that are now

felonies. This is in accordance with the general provision made in *section 5(2)* to the effect that (save where an exception is made) the law and practice applicable to misdemeanours will apply in future. However, a specific provision relating to aiding and abetting, etc., is necessary because the present provision is contained in *section 8* of the Accessories and Abettors Act, 1861, and that Act is being repealed. The specific provision is in *section 6(1)*.

14. *Section 6(2)* proposes to create a new offence to replace the present common law offence of being an accessory after the fact to felony. (An accessory after the fact to felony is one who, knowing another to have committed a felony, aids him in order to enable him to escape apprehension or prosecution.) The proposal is that, if an offence to which there attaches a penalty of five years' imprisonment or a more severe penalty has been committed, any person who without reasonable excuse does any act with intent to impede the arrest or prosecution of another person whom he knows or believes to have committed that (or an equally serious) offence should, himself, be guilty of an offence.

15. This is the first of several instances in the Bill where the abolition of felony, as such, would leave a gap in the law unless a new statutory provision were made. The new provision cannot be an exact re-enactment of the existing law because it is not practicable to draft an exact statutory equivalent of "felony". In practice, however, an offence to which there can attach a penalty of five years' imprisonment, or a more severe penalty, is a reasonable approximation to felony and this is the standard adopted throughout the Bill, except in those cases where a change in substance is intended.

16. *Subsection (3)* provides that, on the trial of an indictment for an offence (other than murder) to which a penalty of five years' imprisonment (or more) may attach, the jury may, if the circumstances warrant it, find the accused not guilty of the offence charged but guilty of the lesser offence of "intending to impede", under the preceding subsection.

17. *Subsection (4)* specifies the penalties for the offence of acting with intent to impede an offender's apprehension or prosecution—they are graduated according to the gravity of the other offender's offence.

18. *Subsections (5) and (6)* deal with procedure.

19. *Subsection (7)* extends the present offences of receiving stolen property to cover dishonestly undertaking or assisting in the retention, removal, etc. of the property.

20. *Subsection (8)* is a consequential adaptation of the reference in *section 3(1)* of the Criminal Justice Act, 1951, to an offence by an accessory before or after the fact.

Section 7

21. The abolition of felony will mean that the offence of misprision of felony and the offence of compounding a felony will disappear. (This does not apply to misprision of treason or compounding treason.) Misprision of felony consists of concealing or procuring the concealment of a felony known to have been committed. It appears, however, that there is an area of doubt about the offence and that, in particular, the position of such persons as near relatives who refrain from reporting felonies is not clear. Compounding a felony consists of agreeing in consideration of any reward not to prosecute. (The return of stolen goods, or any similar making good of a loss, is a "reward" in this context.)

22. It is not proposed to replace misprision of felony but it is proposed in *subsection (1)* to replace, as nearly as may be, the offence of compounding a felony. As in other sections, an offence to which a penalty of five years' imprisonment (or more) may attach is being proposed as the equivalent of felony.

23. *Subsection (2)* deals with what might be looked on as the converse case, i.e., deliberately giving information that an offence has been committed (or information tending to give rise to apprehension for the safety of persons or property) when in fact the report is without foundation. Reports about bombs on aircraft and misleading calls to fire brigades are examples. A somewhat similar type of mischief is the making of a false report or statement to the Garda Síochána by a person pretending to have information about a crime (i.e. a crime that was in fact committed) and this, too, is covered by the subsection. The offences referred to in the subsection have heretofore been prosecuted as offences of "public mischief" but it appears that the legal position is not free from doubt and this subsection is intended to clarify it.

24. *Subsection (3)* provides that proceedings under the section may not be instituted except by or with the consent of the Attorney General and *subsection (4)* provides, in effect, that, except in relation to treason, the section supersedes the common law offence of compounding a felony.

Section 8

25. *Subsection (1)* makes two provisions about trials on indictment. *Paragraph (a)* allows the accused to make a plea of not guilty in addition to demurrer or special plea. This is the present law as regards felonies but not as regards misdemeanours. (A demurrer is a claim that the indictment is not sufficient in law and that the accused is not bound to answer it.) *Paragraph (b)* reproduces the rule, now contained in section 39 (1) of the Criminal Justice Administration Act, 1914, that a person may plead not guilty of the offence charged but guilty of another offence of which he could be found guilty on the indictment.

26. *Subsection (2)* provides that a person charged on indictment with attempting to commit an offence or with an assault or other act preliminary to an offence may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence. An attempt to commit a felony is a misdemeanour (except in certain cases where it is declared by statute to be a felony) and, accordingly, this subsection replaces section 12 of the Criminal Procedure Act, 1851, under which a person charged with a misdemeanour may, if the facts proved amount to felony, be convicted of the felony. (There appears to be some doubt as to whether a person charged with an attempt to commit a misdemeanour may be convicted of the misdemeanour if the facts proved showed that the attempt was successful.) Both in the existing law and in the new subsection, the qualification is made that the right to convict is subject to the discretion of the Court to discharge the jury with a view to the preferment of a new indictment.

Section 9

27. There is a number of offences created by statute for which no maximum penalty is provided in the statute that created the offence. These consist, mainly, of the making of false statements for the purpose of the particular statute concerned. Section 15 of the Criminal Law (Ireland) Act, 1828, set a maximum of seven years' penal servitude for any such offence that is a felony. In theory, the maximum for statutory misdemeanours for which no specific limit is provided is life imprisonment and this applies also to common law misdemeanours but, in practice, imprisonment (as distinct from penal servitude) has been limited by the Courts to a period of two years.

28. The proposed abolition of the distinctions between felony and misdemeanour makes it necessary to make a new provision for these cases, especially as it might be argued that, because of another proposal in the Bill, namely, the abolition of penal servitude, the reasons for the two-year limit on imprisonment which the Courts have applied in practice will have lost their force.

29. *Subsection (1)* proposes that a maximum of two years' imprisonment should apply in all such cases except where the offence

consists of conspiring to commit another offence, in which case a maximum of three years' imprisonment or the maximum applicable to the other offence, whichever is the greater, is proposed.

30. *Subsection (2)* provides that, where a person is convicted of the offence of attempting to commit another offence, the maximum penalty is a term of imprisonment or a fine, as the case may be, not greater than that applicable to the attempted offence it is authorised to deal with. (As this type of offence is not, in general, at present subject to any limit as to the term of imprisonment, this subsection is in effect a second exception to the provision in *subsection (1)* for a two year limit.)

31. *Subsection (3)* deals with the powers of Courts to impose a fine. Under section 4 of the Criminal Justice Act, 1951, the District Court is entitled to impose a fine for any indictable offence it has jurisdiction to deal with. Other Courts, however, have no power to impose a fine where the offence is a felony. Moreover, no Court has a general power to fine for summary offences and, while the particular statute creating a summary offence almost always provides for a fine, there are some summary offences, such as begging, for which the only penalty provided by law is imprisonment.

32. The general effect of the subsection is to extend to all Courts, and for all summary offences as well as indictable ones, a right to impose a fine. More specifically, it provides that, except in a case where a Court is by law required to sentence a person to death or life imprisonment or required to order his detention during the pleasure of the Government, a Court may impose a fine (not exceeding £50 in the case of a summary conviction) in lieu of or in addition to any other penalty, but this is subject to any enactment limiting the amount of the fine that may be imposed or requiring a Court to deal with an offender in a particular way (e.g., by disqualifying him).

33. *Subsection (4)* is intended to make clear (in order to remove a doubt) that a Court may "bind over" a person on conviction without sentencing him to imprisonment or fining him.

Section 10

34. This section provides for the adaptation, in accordance with the provisions of the Second Schedule, of a number of enactments in which references are made to felony, and which require to be adapted in consequence of the abolition of the distinctions between felony and misdemeanour.

Section 11

35. *Subsections (1) and (2)* of this section contain transitional provisions to enable prosecutions already commenced on the basis of the existing law (i.e. before the abolition of the distinctions between felony and misdemeanour) to be continued.

36. *Subsection (3)* contains a general adaptation of references in other enactments to felonies.

37. *Subsection (4)* provides that the references in this Part of the Bill to "felony" shall not be taken as including treason (this is to remove doubts, as treason is sometimes looked on as a type of felony) but that the procedure on trials for treason or misprision of treason is to be the same as the procedure as altered by the Bill in relation to murder.

PART III

POWERS OF ARREST, SEARCH AND TAKING OF FINGERPRINTS

Section 12

38. This section deals with arrests without warrant by the Garda Síochána. The powers of arrest it proposes to give are to replace both

their existing common law powers and also some (but not all) of their statutory powers. The intention is that the section should provide for all the Garda powers of arrest without warrant that are relevant to crime in general (including breaches of the peace and the like) or that are relevant to other provisions in the Bill (such as the provisions about offensive weapons), but it is not intended that these powers should supersede the powers of arrest given in particular statutes dealing with particular offences—for instance, drunken driving.

39. A member of the Garda Síochána has a common law power to arrest without warrant—

- (a) on reasonable suspicion that the person concerned has committed a felony, or
- (b) if he sees a breach of the peace being committed, or
- (c) if he is assaulted or obstructed in the execution of his duty.

40. He has a statutory power of arrest without warrant—

- (a) if he finds a person committing any indictable offence at night (Prevention of Offences Act, 1851, section 11), or
- (b) if he finds a person, at night, loitering in any street, yard, etc., with intent to commit any one of several specified felonies (malicious damage, housebreaking, etc.)—the power, in this latter case, is conferred in the various statutes dealing specifically with these crimes, and all the common felonies are covered—or
- (c) in other specific cases (e.g., drunken driving) where the relevant statute so provides.

The cases mentioned at (b) of the preceding sentence (“loitering with intent to commit a felony”), though dealt with individually in various statutes, amount in practice, when taken together, to a general power in relation to felonies. Accordingly, it is proposed to repeal these various provisions and to make a new provision in *section 12*. On the other hand, the cases mentioned at (c)—i.e. specific cases such as drunken driving—do not lend themselves to grouping under any general head and they are not covered by the Bill.

41. *Subsection (1)* provides power of arrest where the Garda reasonably suspects that the person concerned has committed an offence for which he is liable to a penalty of five years’ imprisonment or a more severe penalty. This replaces the corresponding common law power to arrest on suspicion that the person has committed a felony.

42. *Subsection (2)* provides power of arrest where a person is found by a Garda in the act of doing something which constitutes or which the member reasonably believes to constitute an indictable offence and the Garda is not satisfied as to his identity or is not satisfied that he has a fixed abode in the State. This subsection applies only to overt acts. It does not apply where there is only a suspicion, however strong, with no overt act. The subsection is a modification of the existing law which authorises the arrest of a person found committing an indictable offence at night (*paragraph 40 (a)* above). On the one hand, the application of the new provision is not confined to the night but, on the other hand, the exercise of the power, either by night or by day, is restricted to cases where the Garda is not satisfied as to the person’s identity or satisfied that he has a fixed abode in the State.

43. *Subsection (3)* also deals with a situation where a person is found by a Garda in the act of doing something which constitutes or which the member reasonably believes to constitute an offence of a type specified in the subsection. The offences in question are offences involving actual or threatened danger to life, danger of serious injury to a person or serious damage to property, intimidation of any person, or breach of the peace, or involving drunkenness

or disorder in a public place. The exercise of the power of arrest is subject to the condition that the Garda must be of opinion not only that the person is in the act of committing the offence but that an arrest is necessary to put an end to the danger to life, property, etc. (as the case may be). In so far as the section deals with an offence endangering life, it is meant, primarily, to cover cases where the danger is incidental. If it were a question of a deliberate threat to life, the Garda would have an immediate and unqualified power of arrest under *subsection (1)*.

44. *Subsection (4)* supplements *subsection (3)*, as regards breaches of the peace. It relates to a situation where there is, at the time, no breach of the peace but where there has been one (or a threat of one) and there is a probability that there will be a further, and serious, one. The situation envisaged is one where it was known that persons who had already been involved in a fight or scuffle would be likely to come across each other again at some particular time or place in the near future and to renew the fight on a serious scale. Under existing law, in such a situation, it is necessary to apply for a warrant. The new provision is applicable only where it is not reasonably practicable to apply for a warrant.

45. *Subsection (5)* provides power of arrest where a Garda finds a person at night loitering in any street, yard, etc. and has reasonable grounds for believing that he intends to commit an offence for which he would be liable to a penalty of five years' imprisonment or a more severe penalty. This corresponds substantially to the existing law (*paragraph 40 (b)* above) whereby a person may be arrested for "loitering with intent to commit a felony".

46. *Subsection (6)* provides power of arrest of persons suspected of carrying knives or other weapons contrary to the provisions of *section 22* of the Bill. The power is restricted to cases where—

- (a) the Garda is not reasonably satisfied as to the person's identity (or reasonably satisfied that the person has a fixed abode in the State), or
- (b) the Garda has reasonable grounds for believing that the arrest is necessary to prevent the commission of another offence in the course of which the knife or other weapon might be used.

47. *Subsection (7)*, which provides power of arrest where a person is suspected of having committed an offence against *section 59* (i.e., unlawful possession of goods), is in effect a re-enactment of *section 13 (1)* of the Criminal Justice Act, 1951. (The re-enactment is made necessary by the fact that *subsection (2)* of *section 13* is being repealed and replaced by the modified provision contained in *section 59* of the Bill.)

48. *Subsection (8)* provides power of arrest where a person, after warning, refuses to desist from or continues conduct which the Garda concerned reasonably believes to constitute an offence under *Part VI* (which relates to public meetings, processions, etc.).

49. *Subsection (9)* provides that, for the purpose of arresting a person under any power conferred by this section, a member of the Garda Síochána may enter (if need be, by force) and search any place where that person is or where the member, with reasonable cause, suspects him to be. The existing law relating to the forcible entry of a house to effect an arrest appears to be open to some doubt in certain cases and possibly to differ in some respects according as whether the person seeking to make the arrest is a Garda or a civilian. The proposal in this subsection—which applies only to arrests by the Garda Síochána—corresponds to the existing law as it has been interpreted in practice. (Arrests by civilians are dealt with in *section 13* but that section does not include a provision corresponding to the present subsection.)

50. *Subsection (10)* provides that neither this nor the next section shall affect the operation of any enactment restricting the institution of proceedings for an offence. Thus, where, for instance, the law provides that a prosecution may be brought only with the consent of the Attorney General, that provision would not be superseded by the present section conferring a power of arrest—which is, normally, a step that leads to the institution of proceedings.

51. *Subsection (11)* specifies that the existing common law powers of arrest without warrant are being abolished.

Section 13

52. This section deals with arrests without warrant by civilians. Under existing law, civilians share many of the Garda powers of arrest without warrant, though in some instance there may be some differences as to the precise conditions in which the power may be exercised. For instance, if a Garda arrests a person on a reasonable suspicion that he has committed a felony, the legality of the arrest is not affected if it subsequently transpires that no felony was in fact committed. A civilian, on the other hand, who makes such an arrest is protected against a charge of unlawful arrest only if he can show not only that he had a reasonable suspicion that the person had committed a felony but also that the felony had in fact been committed. Again, it appears that a Garda has an unqualified right to make an arrest where a breach of the peace has been committed in his presence, even if peace has been restored before the arrest is effected, but a civilian making the arrest in similar circumstances might have to show that he had reasonable grounds for thinking that those involved were going to engage in further violence.

53. Civilians also share some of the powers of arrest which the Gardaí have under statute, including the power to arrest anybody found committing any indictable offence at night and the power to arrest anybody found at any time committing an offence against the Larceny Act, 1916.

54. Perhaps the most frequent use in practice of civilian powers of arrest is by persons employed in large retail shops to prevent pilfering. The Bill, however, is framed on the basis that, even though certain other powers of arrest by civilians are rarely used, it is desirable in principle that they should be retained provided safeguards are introduced to prevent their unnecessary or arbitrary use.

55. *Subsection (1)* proposes to authorise arrest by a civilian, on the basis of a reasonable suspicion, where an offence involving—

- (a) the death of or grievous bodily harm to any person, or
- (b) malicious damage, reasonably believed to exceed £50 in amount, to property, or
- (c) an offence under the Larceny Act, 1916,

has been or is being committed and the person making the arrest has reasonable grounds for believing that the suspected offender, if not arrested, may evade justice and that it is not practicable to await the arrival of a member of the Garda Síochána. This provision is intended to replace the existing power of arrest on suspicion in a case of felony.

56. *Subsection (2)* proposes to give to civilians some of the powers being given to Gardaí under *subsection (3)* of the preceding section. Those that it proposes to give are those relating to the protection of life and limb, and the prevention of serious damage to property.

57. *Subsection (3)* abolishes powers of arrest vested in civilians by the common law.

Section 14

58. This section deals with the right of a Garda to search a person. Under existing (common) law, an arrested person may be searched if by violence of conduct or language he gives grounds for suspicion that he may be carrying a weapon or other article with which he may inflict an injury. In addition, any property found on an arrested person may be taken if it is likely to provide material evidence in respect of the offence for which the arrest has been made. Apparently, however, it has not been conclusively determined whether a search is permitted purely as a matter of course even where the nature of the offence is such that the question of a need to search in order to seize evidence in relation to that particular offence cannot arise.

59. *Subsection (1)* proposes that search of a person arrested by a Garda should be authorised—

- (i) where the Garda has reasonable grounds for believing that it is prudent to search him for a weapon or other article with which he might inflict injury, or
- (ii) where the Garda has reasonable grounds for suspecting that the person has concealed on him material evidence in relation to the offence for which he is arrested.

60. *Subsection (2)* relates to a situation in which people are congregated in a particular place (e.g. a dance-hall) and in which a row is taking place or there appears to be a danger of this. The subsection proposes that, in such a situation, if a Garda with reasonable cause suspects that, amongst a number of people present, there are some who are carrying offensive weapons but he has no reason for suspecting any particular one, he may search each of them in order to check if an offensive weapon is being carried illegally. (This provision has to be read subject to the general restriction in *section 18* that a search is not to extend beyond what is reasonably necessary for the purpose for which the search is authorised.)

61. *Subsection (3)* provides for the retention, for use in a prosecution, of any evidence which a Garda finds in a search (whether carried out under this Bill or under some other legal authority). The existing law on this point is in certain respects obscure but it appears to be substantially on the lines of this subsection.

62. *Subsection (4)* provides that where a member of the Garda Síochána finds a person having with him a knife or other article and the member has reasonable grounds for believing that it may be used to inflict an injury, he may retain it for a reasonable time in the interests of safety.

63. *Subsection (5)* abolishes existing common law powers of search of a person that are incidental to arrest.

Section 15

64. This section provides for the issue of search warrants in certain cases. The position, in general, under existing law is that there is no power to search premises (or to issue a warrant to search premises) for evidence relating to a crime that has been committed, that is to say, for evidence as such. There are provisions authorising the issue of a search warrant (a) for stolen goods or (b) for articles that are being kept for use to do malicious injury or the like (the object of the search in this case being the prevention, rather than the detection, of crime), or (c) where there is a suspicion that certain offences (e.g. illegal gambling) are being committed on the premises concerned (in which case the premises themselves are being used illegally and are thereby directly connected with the crime). In most if not all these cases, except where the crime is suspected of being committed on the premises themselves, the goods or other articles for which the search is being made are goods or articles which the occupier is not entitled or authorised to have.

65. This means—to take one example—that there is no power to get a warrant to search for stained clothing, offensive weapons, etc., that may be concealed in a suspect's home (even where the crime is murder) and it appears that the only case of any practical significance in which the law provides a general right of search for evidence as such is where a suspect is himself arrested on the premises. In that case, the law allows the Gardaí to make a search of the premises incidentally to the making of the arrest, though whether it allows this in relation to a premises other than the home or lodgings of the arrested person is obscure and might possibly depend on whether it was an arrest without warrant or an arrest under warrant.

66. *Subsection (1)* provides that a search warrant may be issued by a District Justice or a Peace Commissioner, in respect of certain serious offences specified in the subsection. The warrant is to be issued only where he is satisfied, on the basis of sworn information supplied by a member of the Garda Síochána, that there are grounds for suspecting that material evidence concerning the crime is to be found in the premises.

67. This power is to be additional to other existing statutory powers (*subsection (2)*) but the existing common law power to search premises incidentally to the making of an arrest is being abolished (*subsection (3)*).

Section 16

68. This section is mainly intended to give to the Gardaí certain powers of search to deal with criminals using motor cars but its terms extend to all "vehicles". One situation in which these powers might be used by the Garda Síochána is where they establish road-blocks to apprehend criminals travelling from the scene of a serious crime.

69. The section proposes to confer a power of search of vehicles where the Gardaí are making enquiries into any of a number of specified offences, these being (a) the offences in respect of which a warrant to search premises may be obtained under the preceding section and (b) an offence under the Larceny Act, 1916 (for which a warrant may be obtained under existing law). The power of search is given where the Garda concerned has reasonable grounds for believing that there is in the vehicle material evidence relating to the crime in question. Where evidence of the offence is found in the search, the section confers a further power of search of persons in or accompanying the vehicle. As the Gardaí already have (under the Road Traffic Act, 1961) a power to stop vehicles, the subsection does not have to repeat this provision.

Section 17

70. *Subsection (1)* provides that a person may use such force as is reasonable in the circumstances to prevent crime or to make or assist in a lawful arrest or search. The existing law (i.e. the common law) on this matter is in certain respects obscure and may depend on whether or not the crime is a felony—there appears to be some authority for the view that, strictly, the law may allow force to be used even to an unnecessary and unreasonable degree where the crime involved is a felony.

71. *Subsection (2)* specifies that the power conferred by the preceding subsection is to supersede the common law power.

Section 18

72. *Subsection (1)* contains a general restriction on the right of search conferred by earlier sections. It provides that the search may not be carried out to any extent greater than is reasonably necessary for the purpose for which the search is authorised unless in the course of the search evidence is found indicating, for instance, that some other offence that is indictable is being committed.

73. *Subsection (2)* provides that nothing in those sections giving a right of search shall authorise the search of a woman or girl otherwise than by a woman.

Section 19

74. This section deals with the taking of fingerprints of a person charged with an offence. At present, this matter is governed by the Regulations as to the Measuring and Photographing of Prisoners, 1955 (S.I. No. 114), made under the Penal Servitude Act, 1891. Those Regulations provide for the taking of fingerprints of persons in custody. They permit the taking of fingerprints of untried prisoners where this is approved by the Minister for Justice or "upon application in writing of a member of the Garda Síochána of not lower rank than Inspector approved by a Justice of the District Court or, in the Dublin Metropolitan District, by the Commissioner or a Deputy Commissioner of the Garda Síochána". They provide, in the case of an untried prisoner without previous convictions, that any fingerprints taken must be either handed over to him or destroyed on his discharge or acquittal.

75. *Subsection (1)* is intended to supersede those provisions, in so far as they apply to untried prisoners. The proposal is that fingerprinting of untried persons may be authorised by an order of the District Justice, to be applied for only by a member of the Garda Síochána not below the rank of sergeant.

76. *Subsection (2)* provides that the fingerprints may be taken at the place where the application is made (this is to cover the case where it is made in Court and the prisoner is in Court also) or, if the prisoner is remanded in custody, at any place to which he is committed.

77. *Subsection (3)* allows the use of such reasonable force as may be necessary where fingerprints are being taken under this provision.

78. *Subsection (4)* provides for the destruction of fingerprints (and all copies or records thereof) if the person is acquitted.

Section 20

79. This section deals with the taking of fingerprints of a suspect who is not under arrest. It is new to the law.

80. *Subsection (1)* provides that a District Justice may authorise fingerprints to be taken of a suspected person in circumstances similar to those in which he may authorise the issue of a search warrant, i.e. in the case of offences under the Larceny Act and a limited number of specified serious offences.

81. *Subsection (2)* limits the validity of an order of this kind to a period of one month. *Subsections (3) and (4)* correspond to *subsections (3) and (4)* of the preceding section.

Section 21

82. This section deals with the taking of fingerprints of persons who are convicted of (or dealt with under the Probation of Offenders Act, 1907, in respect of) an indictable offence. In so far as it applies to persons who are not sentenced to imprisonment, it is new to the law.

83. *Subsection (1)* provides that where a person charged with an indictable offence is convicted (or dealt with under the Probation of Offenders Act, the charge having been proved) his fingerprints may be taken by a member of the Garda Síochána, within the precincts of the Court or at any other convenient place.

84. *Subsection (2)* provides that if the foregoing power is to be exercised it must be exercised within one week unless the person has made it impracticable to do this.

85. *Subsection (3)* allows the use of reasonable force in the taking of fingerprints under this section.

86. Unlike the preceding two sections, this section is concerned with persons who have been shown to be guilty of an indictable offence and has no provision for the destruction of the fingerprints. The object of the section is to permit an expansion of present fingerprint records.

PART IV

OFFENSIVE WEAPONS

Section 22

87. *Subsection (1)* contains a general prohibition on the carrying of any knife, other than an ordinary pocket-knife, in places such as dance-halls, cinemas or cafés, at times when people are liable to be resorting to them, or at sports fixtures, carnivals, etc. The prohibition is not absolute—it is not applicable to a person who has a “reasonable excuse” but, in the event of a prosecution, the onus will be on him to prove the excuse to the satisfaction of the Court. The exemption is primarily intended to cover persons who are employed in or about the place in question and who need a knife (possibly a particular kind of knife) for their work but no doubt there could be other circumstances in which a person would have a reasonable excuse for having a knife with him.

88. *Subsection (2)* contains a prohibition—again, subject to an exemption for the person who can prove he has a “reasonable excuse”—on the possession in any public place of any “flick-knife” (defined in *subsection (7)*) or any other article made or adapted for use for causing injury to the person. The prohibition is wider in its application than that in the preceding subsection in that it applies to any “public place” (defined in *section 2*) and not just to places where people congregate. The wider application of this particular prohibition reflects the fact that the articles it is designed to apply to are articles (in practice, usually home-made or home-adapted), such as filed steel combs, that in the ordinary course would not be made or adapted except for use as offensive weapons, as distinct from most knives which, even though they may be carried and used as weapons, were made for legitimate purposes.

89. *Subsection (3)* prohibits the carrying, in a public place, of any article intended by the person concerned unlawfully to cause injury to or intimidate any person either in a particular eventuality or otherwise. In contrast to the preceding two subsections which prohibit the carrying of certain articles without reasonable excuse, even if the person has formed no intention to misuse them, this subsection deals with articles the carrying of which is not in itself unlawful but which would be unlawful if there were an intention to misuse them. Thus, the carrying of a knife in a place not mentioned in *subsection (1)* would be an offence under *subsection (3)* if, but only if, it were carried with the intention of unlawfully injuring or intimidating somebody. The intention to misuse the article is an essential ingredient of the offence under this subsection and the onus of proving this intention will be on the prosecution.

90. *Subsection (4)* provides a general prohibition on transactions in flick-knives. It does not make it an offence merely to possess one (though possession otherwise than in the owner's own home is almost certain to be an offence under one of the other subsections).

91. *Subsection (5)* provides that, in a prosecution for the offence of carrying any article with intent to injure, etc., it will not be necessary to allege or prove that the intention was to injure a particular person, and it provides that it will be open to the Court, on the basis of the facts of the case as a whole, to regard possession of the article in the particular circumstances as sufficient evidence of an intention to misuse it, in the absence of any adequate explanation by the defendant.

92. Subsection (6) provides for penalties and subsection (7) defines "flick-knife".

Section 23

93. This section makes it an offence, carrying a penalty of up to two years' imprisonment and a fine of up to £200, to produce, in a manner likely unlawfully to intimidate, any knife or any article capable of inflicting serious injury, while the person so producing it is committing another offence or is apparently about to commit one, or while he is engaged in any dispute or fight.

94. This provision may be compared with sections 23 (1) and 28 of the Larceny Act, 1916, and sections 25 to 27 of the Firearms Act, 1964, which deal with the commission or attempted commission of certain offences while armed with an offensive weapon or (in some cases) specifically with a firearm or imitation firearm.

PART V

PROOF AND EVIDENCE

Section 24

95. Subsection (1) proposes that in criminal proceedings (other than the preliminary examination of an indictable offence, which is dealt with in the Criminal Procedure Act, 1967), written statements (unaccompanied by oral evidence) will be admissible on certain conditions in the same way as oral evidence.

96. Subsection (2) sets out the conditions, of which perhaps the most important is that none of the other parties or their solicitors, having been served with a copy of the statement, objects within fourteen days.

97. Subsection (3) provides that the party by whom or on whose behalf the copy was served may call the person who made the statement to give oral evidence and that the Court may call that person either of its own motion or on the application of any party to the proceedings. Thus, even if a party on whom the copy is served fails to object within the fourteen days in which he has an absolute right to refuse to allow the written statement to be admitted, he may still object and it will be for the Court to decide whether the objection at that stage is *bona fide* or, for instance, only a delaying tactic.

98. Subsections (4) to (7) are procedural.

99. Subsection (8) makes it an offence for a person wilfully to include in such a written statement anything which he knew to be false or did not believe to be true and provides penalties of up to six months' imprisonment and a fine of up to £100 but this will apply only if the statement has, in fact, been given in evidence.

Section 25

100. This section is intended to dispense with the need to produce formal proofs of matters that are not disputed by the defence and that the defence are willing formally to admit. (This applies only to formal admissions deliberately made for the purpose of waiving proof of the fact admitted—not admissions made by the defendant by word or conduct in an informal way and which he may seek to deny or to suggest were given without proper caution.)

101. Subsection (1) contains the two basic provisions that—subject to conditions specified in the following subsection—facts may be admitted and that the admission shall, as against the party making it, be conclusive evidence of the facts so admitted.

102. *Subsection (2)* sets out the conditions. They include conditions to the effect that—

- (a) the admission, unless made in Court, must be in writing,
- (b) if the admission is made beforehand on behalf of or by an individual, it must be either made or approved by his counsel or solicitor, and
- (c) an admission made in Court by an individual cannot be accepted unless he is legally represented.

103. *Subsection (3)* provides that an admission made for the purposes of particular criminal proceedings shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to the same matter.

104. *Subsection (4)* provides that an admission may, with the leave of the Court, be withdrawn.

Section 26

105. This section contains provisions allowing the Commissioner of the Garda Síochána or the governor of a prison or of St. Patrick's Institution to give a certificate that particular fingerprints were taken on a particular occasion or were the fingerprints of a particular person, and in this way providing a method of formally proving that a person had previous convictions without the need to bring a witness specially to prove this. The certificate is not conclusive and can be challenged by the person concerned, in which case of course the Court could seek oral evidence. (The need for evidence of previous convictions would usually arise only when the person had again been convicted, but before sentence, since evidence of previous convictions is not normally admissible while a person is on trial—see note on next section.)

Section 27

106. This section deals with the admissibility of evidence tending to show that the accused person was previously guilty of crime or misconduct. The law relating to the admission of such evidence was considered by the Supreme Court in *The People (Attorney General) v. Kirwan* [1943] I.R. 279. In the judgments in that case, the following statement of the law from the judgment in *Makin v. Attorney General for New South Wales* [1894] A.C. 57 was referred to with approval:

“It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.”

107. In his judgment in *Kirwan's Case*, Mr. Justice O'Byrne, commenting on the statement quoted in the preceding paragraph, stated (p. 299) as follows:

“The rule, so enunciated, has been considered in a great number of subsequent cases in this country and in England, and I am not aware of any case in which its accuracy has been questioned. Various additions and amplifications have been suggested; but these are merely for the purpose of testing the question of relevancy and the consequent application of the rule.

It is stated in the rule that the proposed evidence may be relevant if it bears upon the question whether the acts alleged to constitute the crime were designed or accidental, or is required to rebut a defence which would otherwise be open to the accused. It seems clear that these tests were stated merely by way of illustration and were not intended to be comprehensive and exclusive."

108. *Section 27* seeks to set down some governing principles in statutory form. The application of the principles to the particular case will, however, still require to be considered by the Court, which will have the duty, first of all, of determining whether the evidence in question is relevant to an issue before the Court and, secondly, in a case where the evidence is relevant, whether it would be likely to have a prejudicial effect disproportionate to its probative value. *Subsection (3)* makes clear that the section is designed only to ensure that certain evidence will be admissible and is not to be construed as making inadmissible any evidence now admissible.

PART VI

MEETINGS, PROCESSIONS AND DEMONSTRATIONS

Section 28

109. *Subsection (1)* of this section, which relates to meetings, processions or demonstrations held in the vicinity of the Houses of the Oireachtas, in effect replaces section 28 of the Offences Against the State Act, 1939—the latter section is listed for repeal.

110. Both section 28 of the 1939 Act and the present subsection deal only with meetings, etc., that are held within half a mile of the Houses of the Oireachtas on a day on which the Dáil or Seanad is sitting. There are, however, some differences between them. The 1939 Act permits the prohibition by the Garda Síochána of any such meeting (on the basis, presumably, that the Gardaí would be able to distinguish between meetings that were being held near Leinster House precisely because it was the seat of the Dáil or Seanad and meetings that happened to be held near Leinster House but that had no connection with it). The new subsection is narrower in that it applies only to meetings (etc.) that are "calculated to influence or affect the deliberations of such House of the Oireachtas, or the views or actions of any member thereof" but it itself declares such meetings to be unlawful and their unlawfulness is not to be dependent on a Garda prohibition. A difference in form (though not in substance, as section 28 of the 1939 Act has been interpreted) is that the new subsection specifically refers to "demonstrations" (as well as to meetings and processions) in the vicinity of the Houses of the Oireachtas.

111. *Subsection (2)* provides that the prohibition will not affect the right to picket in pursuance of a trade dispute which is conferred by the section 2 (1) of the Trade Disputes Act, 1906, if any of the workmen in the dispute ordinarily work in the building in which the House of the Oireachtas is sitting. There is no such exemption in the 1939 Act.

112. *Subsection (3)* contains a prohibition on public meetings, processions or demonstrations relative to proceedings pending or at hearing before the Courts. This is new to the statute law but it seems likely that, under the existing common law, such meetings would usually constitute contempt of court. The object of the subsection is to enable proceedings to be instituted in the ordinary way, instead of by the procedure applicable in "contempt of court" cases.

113. *Subsections (4) to (6)* are ancillary provisions. *Subsection (6)*, which relates to proof of sittings of a House of the Oireachtas, is similar to a provision in the Companies Act, 1963.

Section 29

114. This section supplements *section 28*. As already mentioned, that section differs from *section 28* of the 1939 Act in that, under the latter section, the illegality of a meeting in the vicinity of Leinster House depended on a Garda prohibition whereas, under the Bill, it is proposed that, once such a meeting is "directed at" the Oireachtas, it will be illegal. There might, however, be borderline cases in which the Garda Síochána would be of opinion that the meeting was one which *section 28* prohibits and in respect of which it would be their duty to arrest those responsible if they persisted, while the latter might be of opinion that the meeting was not of this kind and might feel justified in contesting the Garda view. To enable such a difference of view to be resolved one way or the other before any question of arrest or criminal proceedings arises, *section 29* provides that a prohibition notice may be served on the organisers of a meeting, etc., which an officer of the Garda Síochána not below the rank of Superintendent has reasonable grounds for believing to be unlawful but that the organisers may appeal in a summary way to the High Court against that prohibition. The section also provides that where the organisers of a meeting (etc.) notify the local Superintendent in writing that if a prohibition notice is issued they will appeal, the Superintendent must—if he has decided to issue the notice—issue it with all convenient speed so as to allow, in so far as the circumstances permit, adequate time for the taking of an appeal.

Section 30

115. This section provides that advance notice is to be given to the Garda Síochána of certain public meetings and processions. It applies only to meetings and processions that are not customarily held (i.e., the kind of meeting or procession that the Gardaí would not be likely to know of or expect in the ordinary course themselves). The section is intended partly to enable the Garda Síochána to make arrangements for traffic control, etc., and partly to ensure that, if a meeting or procession ought to be prohibited or regulated under the following section, they will know in advance of the intention to organise it.

116. The general provision, requiring at least 24 hours' advance notice, is in *subsection (1)*. *Subsection (2)* makes it an offence not to comply. *Subsection (3)* exempts election meetings, meetings held at a time and place or on an occasion when meetings are customarily held, funerals, etc.

Section 31

117. *Subsection (1)* provides that an officer of the Garda Síochána not below the rank of Superintendent may impose conditions in relation to the holding of a public meeting (or if necessary prohibit it entirely) if he has reasonable grounds for believing that—

- (a) it may occasion serious public disorder, or
- (b) it may (in the case of a meeting in the public highway) be an undue interference with the rights of other users of the highway.

118. *Subsection (2)* has similar provisions in relation to processions.

119. *Subsection (3)* is a twofold provision. First, it provides that, in deciding whether to prohibit or impose conditions on a meeting or procession on the grounds of undue interference with other users of the highway, the Gardaí are to take into account local custom in relation to meetings or processions of the kind in question. Secondly, it forbids discrimination between different groups in relation to the holding of meetings, etc., while permitting the Gardaí to take account of expected differences in the size of meetings and other relevant factors.

120. *Subsection (4) (a)* provides for an appeal to the High Court against an order prohibiting or imposing conditions on the holding of a meeting. *Subsection (4) (b)* provides, in effect, that if Garda strength for the occasion is inadequate to guard against an expected outbreak of violence, the meeting may be prohibited (or conditions imposed) even if the threat to the peace comes from another source. (This principle is already established in the law.)

121. *Subsection (5)* provides that, where there has been a failure to notify the Superintendent in advance as required by *section 30*, any member of the Garda Síochána may by oral or written direction to any person present prohibit the meeting or procession on any ground on which a Superintendent may do so (i.e., danger of serious public disorder or undue interference with the rights of others).

122. *Subsection (6)* specifies the offences and *subsection (7)* provides that, in a case where the Gardai are notified to the effect that if they issue a prohibition notice it is intended to appeal against it, they must—if they have decided to issue the notice—issue it with all convenient speed so as to allow, in so far as the circumstances permit, adequate time for the taking of an appeal.

Section 32

123. The present general law concerning “watching and besetting” is contained in *section 7* (mainly paragraph 4 of the section) of the Conspiracy and Protection of Property Act, 1875 (as modified by *section 2(1)* of the Trade Disputes Act, 1906, which deals with peaceful picketing in trade disputes). *Section 32* of the Bill is, in effect, a re-enactment of the relevant part of *section 7* of the 1875 Act, with a verbal change to confirm that (as already judicially, though not conclusively, determined) it applies not only to unlawful picketing directed at somebody in the house concerned but also to unlawful picketing directed against any third party.

124. Under the 1875 Act, this offence is a summary one with a penalty of up to £20 fine or three months’ imprisonment (with or without hard labour). All summary offences that are liable to imprisonment under the 1875 Act, however, are triable on indictment at the option of the accused person. An offence under *section 32* would—under *section 34*—be triable only summarily and the fine is being raised to £50. (The maximum term of imprisonment remains three months but without hard labour—see *section 42*.)

Section 33

125. *Subsection (1)* makes it an offence to act in a disorderly manner at a public meeting for the purpose of preventing the transaction of the business of the meeting. This is a re-enactment of the Public Meeting Act, 1908.

126. *Subsection (2)* provides that, where a person is prosecuted for an offence under this section, the public meeting will be presumed to be lawful until the contrary is shown.

Section 34

127. This is a general provision that a person guilty of an offence under this Part will be liable, on summary conviction, to a fine not exceeding £50 or imprisonment for a term not exceeding three months, or to both.

PART VII

APPEALS AND CASES STATED

128. The provisions of this Part allowing certain appeals to be made to the Supreme Court and allowing the Supreme Court to make such further orders as it thinks appropriate correspond generally to the

existing law governing appeals by the Attorney General to the Supreme Court in habeas corpus cases, as settled by a recent judgment of the Supreme Court (*The State (Browne) v. Governor of Limerick Prison and District Justice Feran*). That judgment established that an appeal lies to the Supreme Court against an order of the High Court under Article 40.4.2° of the Constitution (i.e., in habeas corpus cases) for the release of a person from detention and that the Supreme Court, when it reverses the order of the High Court, may, if it thinks fit, direct a warrant for the apprehension of the former prisoner for the purpose of his recommittal to a place of detention.

Section 35

129. Paragraph (a) provides that, where a person has been released by the High Court in habeas corpus proceedings and the Attorney General appeals to the Supreme Court, the person concerned will be given, as of right, free legal aid under the Criminal Justice (Legal Aid) Act, 1962, in the Supreme Court proceedings.

130. Paragraph (b) provides that if the person is not represented at the hearing of the appeal, the Supreme Court may assign a solicitor and counsel under the statutory legal aid scheme to argue in support of the decision of the High Court.

Section 36

131. Subsection (1) confers on the Attorney General a right of appeal to the Supreme Court against a decision of the Court of Criminal Appeal that resulted in the discharge of a person who had been convicted of an offence. The appeal is restricted (as the corresponding appeal by a person convicted by the Court of Criminal Appeal is restricted under existing law) to a case involving a point of law of exceptional public importance which it is desirable in the public interest to have determined by the Supreme Court.

132. Subsection (2) provides for free legal aid in the Supreme Court on the same basis as in section 35.

Section 37

133. Subsection (1) re-enacts, in part, section 34 of the Criminal Procedure Act, 1967, which provides that where, on a question of law, a verdict in favour of an accused person is found by direction of the trial judge, the Attorney General may refer the question of law to the Supreme Court for determination. (The provision in section 34 of the 1967 Act that the decision of the Supreme Court on the question of law is not to affect the verdict in favour of the accused is not being re-enacted and a provision that he may be re-tried is included in section 40.)

134. Subsection (2) is procedural.

135. Subsection (3) provides for the granting of free legal aid in the Supreme Court on the same basis as in section 35.

Section 38

136. Subsection (1) provides for an appeal to the Supreme Court, by way of a case stated, on the application either of the defendant or of the prosecutor, from a determination by the Circuit Court of a District Court appeal. The appeal to the Supreme Court, which is confined to points of law, corresponds to the provisions of the Summary Jurisdiction Act, 1857, as amended by section 51 of the Courts (Supplemental Provisions) Act, 1961, which authorise cases to be stated by the District Court for the opinion of the High Court on the application of any party to the proceedings.

137. Subsection (2) contains consequential adaptations of the 1857 Act, as amended.

Section 39

138. *Subsections (1) and (2)* provide that, where a case is stated on the application of the prosecutor, legal aid will be provided, as of right, for the defendant in the Supreme Court or High Court, as the case may be. Where the prosecutor is a Minister of State, the Attorney General, the Revenue Commissioners or a member of the Garda Síochána, the legal aid is being given pursuant to the statutory legal aid scheme (*subsection (1)*). In the case of any other prosecutor, the defendant's costs of representation are to be borne by the prosecutor (*subsection (2)*). In both cases, provision is made that the court itself may assign counsel to adduce arguments if the defendant is not represented and that, in that event, the costs of the assignment are to be borne by the prosecutor.

139. *Subsection (3)* provides that where the Circuit Court, on appeal, affirms a District Court conviction and the convicted person appeals, by way of case stated, to the Supreme Court, legal aid may be provided for him on the same basis as it is provided under the Criminal Justice (Legal Aid) Act, 1962, in other cases stated.

140. *Subsections (4) and (5)*, provide legal aid, as of right, for the defendant on the same basis as in *subsections (1) and (2)* where an appeal is taken to the Supreme Court at the instance of the prosecutor from a determination of the High Court on a case stated from the District Court.

141. *Subsection (6)* is a consequential provision.

Section 40

142. *Subsection (1)* is intended to ensure that the existing powers of the Supreme Court in relation to appeals by the Attorney General in habeas corpus cases will extend to the appeals and the case stated provided for by this Part of the Bill and also to an appeal by a prosecutor from a determination of the High Court on a case stated. (In these habeas corpus appeals by the Attorney General, the Supreme Court, where it reverses the order of the High Court for the release of a person from detention, may make such further orders as are necessary to give effect to its decision, including an order for the person's re-arrest—*paragraph 128* above.)

143. The subsection provides, accordingly, that the Supreme Court may, in the cases mentioned, if it considers it appropriate to do so in the interests of justice and having regard to all the circumstances of the case, affirm any conviction of a lower court that had been reversed or order a re-trial and may order the person to be arrested, detained or admitted to bail.

144. *Subsection (2)* provides that where the Supreme Court makes, under *subsection (1)* or on an appeal by the Attorney General in a habeas corpus case, an order for re-trial, the person concerned will be entitled, as of right, to legal aid under the statutory legal aid scheme in relation to the new trial.

Section 41

145. This section provides for the amendment of section 8 of the Criminal Justice (Legal Aid) Act, 1962, which restricts the powers of the Court of Criminal Appeal to order that the accused person's costs of the appeal proceedings and of the proceedings in the lower court be paid by the State, in a case where the person has already been legally aided. The amendment takes the form of adding three additional subsections to section 8.

146. The first additional subsection is, in effect, an extension of the existing subsection (2), which applies to the Court of Criminal Appeal, so that it will now apply to the Supreme Court also. The second additional subsection (numbered *subsection (4)*) applies the same rule to a new trial, if this is ordered by the Supreme Court or the Court of Criminal Appeal. The third additional subsection is a consequential provision. It is linked with the repeal, in the First Schedule, of certain words in the existing subsections (1) and (2).

PART VIII

MISCELLANEOUS

Section 42

147. *Subsection (1)* formally abolishes penal servitude, substituting imprisonment. (There is no difference in practice between the prison conditions applicable to penal servitude and those applicable to imprisonment.) The minimum period of penal servitude is three years but, under section 1 of the Penal Servitude Act, 1891, the Court may substitute imprisonment for a maximum period of two years. This excludes (for most offences at all events) sentences of, say, two-and-a-half years. This restriction will no longer exist under the new provision.

148. *Subsection (2)* abolishes sentences of imprisonment with hard labour. (There is no difference in the prison conditions applicable to persons sentenced to "ordinary" imprisonment and those applicable to persons sentenced to imprisonment with hard labour. Formal sentences of imprisonment "with hard labour" are nowadays very rare.)

149. *Subsection (3)* is, in effect, a repeal of various obsolete provisions which envisaged that prisoners would be divided into several divisions of varying degrees of severity.

150. *Subsections (4) and (5)* are transitional provisions.

Section 43

151. This section provides that, in criminal proceedings in which there is a jury of at least eleven members, a verdict agreed to by at least ten of them will suffice instead of a unanimous verdict. The provision applies both to verdicts of "guilty" and verdicts of "not guilty." In the ordinary case where the jury consists of twelve persons this means that a verdict of 11-1 or 10-2 will suffice. It also means, in the exceptional case where a jury is reduced to eleven persons (e.g. owing to illness of one of the members), that a 10-1 verdict will suffice. (The law allows a jury to continue with only ten members but the section will not affect the existing position in such a case—the verdict will, as at present, have to be 10-0.)

Section 44

152. This section provides that the Court may permit the prosecution, after the case has closed, to remedy an omission in the proofs if the prosecution state that they can remedy the omission and the judge considers that, in the interests of justice and having regard to all the circumstances of the case, it is reasonable to permit them to do so.

Section 45

153. *Subsection (1)* provides that the Minister for Justice, on being satisfied that the presence in a prison of a person undergoing imprisonment is likely to be detrimental to the security of or to good order in the prison, may direct the transfer of the person to military custody.

154. *Subsection (2)* permits the return of such a person to civilian custody if the circumstances necessitating his transfer have changed.

155. *Subsection (3)* provides that specified information about such a transfer to military custody is to be laid before each House of the Oireachtas as soon as may be.

156. *Subsection (4)* provides that the Minister for Defence may make regulations governing the custody of persons transferred to military custody under this section.

Section 46

157. This is an amendment of section 13 of the Criminal Justice Act, 1960. That section provides that a person between 17 and 21

years of age may, in lieu of being sentenced to imprisonment for an offence, be sent to St. Patrick's Institution for a similar term. The section does not, however, apply to a sentence imposed in default of payment of a fine and the purpose of the amendment is to include such a provision.

Section 47

158. This section has a twofold object, viz.—

(a) to permit an escaped prisoner to be re-arrested and re-committed by order of a District Justice (or, where he is not available, a Peace Commissioner), without the need to charge him with the offence of escaping where so charging him can serve no useful purpose (e.g., in the case of a prisoner already serving a life sentence);

(b) to permit a person who overstays a period of temporary release (or who breaks a condition of his release) to be likewise re-committed, instead of being charged: in this case, the main reason for the change is that a warrant issued under this new section, unlike a warrant issued in respect of the offence of overstaying the period or breaking a condition of temporary release, is one that can be executed in Britain and Northern Ireland and, accordingly, the section will enable such a person, if he goes to Britain or Northern Ireland, to be returned. The offence of overstaying the period or breaking a condition of temporary release was created by section 6(2) of the Criminal Justice Act, 1960, and that provision is being repealed.

159. *Subsection (1)* provides that a District Justice or a Peace Commissioner may issue a warrant for the arrest of a person who is unlawfully at large from a prison or who is deemed by section 6(1) of the Criminal Justice Act, 1960, to be unlawfully at large, i.e., a convicted person or "criminal lunatic" who was temporarily released and who either has failed to return since the period of temporary release expired or has broken a condition of his temporary release.

160. *Subsection (2)* provides that where a person is arrested under such a warrant, he is to be brought before a District Justice (or, if a Justice is not immediately available, before a Peace Commissioner) who, if satisfied that he is the person concerned, etc., is required to order him to be returned to the prison or the hospital, as the case may be, where he is required or liable to be detained.

161. *Subsection (3)* provides that references in the section to "prison" apply also to St. Patrick's Institution.

Section 48

162. This section re-enacts, as a general provision of the law, various statutory provisions under which offenders may be ordered by the Court to pay costs. (Some of the existing provisions governing payment of costs, including witnesses' expenses, relate to felonies and would cease to have effect when felony is abolished.)

163. *Subsection (1)* contains the basic provision. *Subsection (2)* provides that the payment of costs may be ordered by the Court to be made out of any moneys taken from the person concerned on his apprehension or that it may be enforced in the same way as in civil cases. *Subsection (3)* makes clear that the defendant may be ordered to pay or contribute towards witnesses' expenses even though there may be an arrangement (as there is at present) to pay or contribute towards such expenses from State funds. *Subsection (4)* is a procedural provision relating to the disposal of moneys received by way of costs in certain cases.

Section 49

164. Section 4 of the Forfeiture Act, 1870—that Act is being repealed in full—allows the Court, on the application of an aggrieved person, to order a person convicted of felony to pay compensation for loss of property suffered by the applicant through the felony, up to a limit of £100. Apart from the fact that the provision is limited to felonies, it does not apply to damage to (as distinct from loss of) property or to personal injury and the object of *section 49* is to substitute a new provision not subject to those limitations, thereby enabling the Court, when dealing with the criminal charge, to order compensation (up to a limit of £100) to be paid to the victim, without the need for the victim to bring civil proceedings in respect of the damage caused to him. The Court already has power under section 45 of the Larceny Act, 1916, to order restoration of stolen property, etc., but this is also provided for in the section so that the Court may be free to deal with the question of restoration in accordance with the provisions of the section.

165. *Subsection (1)* contains the basic provision that compensation (and, where appropriate, restoration of stolen goods) may be ordered. An order to this effect is referred to in the section as a compensation order and the word “compensation” is used in the following paragraphs to cover, where appropriate, the restoration of stolen property. *Subsection (2)* limits to three years the period over which payment by instalments may be ordered.

166. *Subsection (3)* provides that, subject to an exception necessary to avoid double payment, a compensation order may be additional to any other order (e.g., for the imposition of a penalty) which the Court may make but that, where a question of compensation arises, the Court may take all the circumstances into account when considering the question of a penalty. The subsection is drafted on the basis that, in some cases, the payment of compensation might involve an exceptional and possibly a sustained effort by the defendant, in which case the Court might decide to reduce or even to waive the penalty it would otherwise impose but that, on the other hand, the case might be one in which the payment of compensation would involve no particular effort and in which a failure on the defendant's part to pay compensation might be an aggravating factor in that it disclosed an attitude of continued indifference to the rights of the victim.

167. *Subsection (4)* allows the Court, in appropriate cases, to postpone a decision on the question of a penalty until it sees how the defendant complies with a compensation order but it provides that, in such a case, the Court must not indicate what penalty it may impose in the event of failure to comply. It also provides that if a penalty is imposed it may not be suspended on the condition that compensation is paid.

168. *Subsection (5)* provides that the injured person retains his right to take a civil action in respect of the wrongful act but that, in such an action, the Court will take account of any compensation paid under the order and, if he is given damages, he will not be entitled to any further benefit under the compensation order.

169. *Subsection (6)* provides that, where a compensation order is under the preceding subsection superseded by a civil award, and the case is one in which a penalty has been postponed, the Court may call back the offender to deal with him, without waiting for the period originally fixed to elapse.

170. *Subsection (7)* provides that a compensation order may be enforced in the same manner as an order of a Court exercising civil jurisdiction. *Subsection (8)* is designed to prevent two compensation orders being made in respect of a road traffic offence. *Subsection (9)* defines “injured party” in such a way as to ensure that, if the person who suffered the injury has died, his estate (or, in a fatal injury case, his dependants) may benefit under a compensation order.

Section 50

171. This section deals with suspended sentences. The Courts sometimes suspend penalties wholly or in part. There appears to be no statutory authority for the practice though its existence is recognised in the District Courts Rules, 1948. (Rule 68 (2) sets a six-month limit to the issue of a warrant to enforce a "suspended sentence".) *Section 50* proposes to give statutory recognition to the practice, subject to a limit of three years on the period during which the suspended penalty may be enforced and subject to the reservation that it will not be open to a Court to impose a condition restricting the person's choice of a country of residence.

Section 51

172. The formal effect of this section is that suicide is no longer to be an offence. Historically, the fact that suicide was a felony had the direct effect that the property of the deceased person became forfeit. Nowadays, it has no direct effect in law but it has the indirect effect that attempted suicide is also an offence. The practical effect of the section is, therefore, that attempted suicide will no longer be an offence.

Section 52

173. The object of *subsection (1)* is to provide that, notwithstanding the fact that suicide is no longer to be an offence, it will be an offence, attracting a penalty of imprisonment for up to 14 years, to aid, abet, counsel or procure the suicide or attempted suicide of another person.

174. *Subsection (2)* provides that, where the facts so warrant, a person charged with murder may be found guilty of an offence under *subsection (1)*.

175. *Subsection (3)* provides, in effect, that a coroner's inquest, in a case of suspected suicide, must have a jury. (This corresponds with existing practice.)

Section 53

176. *Subsection (1)* makes it an offence to encourage or advocate the attainment of any particular object by criminal means. *Subsection (2)* makes it an offence to encourage or advocate the non-payment of taxes, local rates, rents of local authority houses, or other moneys payable to public funds.

177. These provisions are in some respects similar to section 18 of the Offences Against the State Act, 1939, but the latter is concerned with organisations that engage in this kind (or certain other kinds) of activity whereas the present section is related to individuals as such (though they may, of course, be acting in concert).

178. *Subsection (3)* provides a penalty of up to six months' imprisonment or £100 fine, or both, on summary conviction, or up to two years' imprisonment or £200 fine, or both, on conviction on indictment.

Section 54

179. *Subsection (1)* proposes that a person who is guilty of the offence of encouraging or advocating the withholding of taxes, rates, etc. (i.e., under *subsection (2)* of the preceding section) will—subject to a qualification mentioned later—be disqualified for five years from, himself, receiving certain grants from public funds.

180. The qualification to that provision is in *subsection (2)* and is to the effect that the Court will have power, both at the time of the conviction and (on application by the convicted person) at any later stage, to waive the disqualification, with effect from a current date, on condition that the person concerned enters into a recognisance as to his future behaviour.

181. *Subsection (3)* provides that, where an application for the waiving of a disqualification is refused, a further application may not be made for three months. (This corresponds with the rule under the Road Traffic Act in relation to driving disqualifications.)

182. *Subsection (4)* lists certain payments, some of which might conceivably be classed as "grants", that are exempt from these provisions and the provisions of the following two sections. The exemptions include (a) social welfare payments, (b) pensions, disablement allowances, etc., paid in respect of any service or thing done—this would include military service pensions—and (c) educational or training grants paid for the benefit of a third party (such as a child).

Section 55

183. *Subsections (1) and (2)* provide that, where a fine or other monetary penalty is imposed for an offence under *Part VI* (which relates to public meetings, etc.) or under *section 53* (which relates to the offence of encouraging either the use of criminal means to attain objectives or the withholding of taxes, etc.), the Court, may, on the application of the prosecutor, order that the fine or other sum may be deducted from grants payable from public funds. (The exemptions set out in *subsection (4)* of the preceding section apply.)

184. *Subsections (3) to (6)* contain procedural provisions to enable effect to be given to such a court order.

Section 56

185. *Subsection (1)* provides that, where the Court orders the payment of money due by way of taxes, rates, etc., and it appears to the Court that the failure to pay has been due wholly or partly to the activities of any group of persons advocating or encouraging non-payment, the Court may order payment to be made from certain grants, if these are payable to the defendant from public funds. (Again, the exemptions in *section 54 (4)* are applicable.)

186. *Subsections (2) to (4)* contain procedural provisions to enable effect to be given to such a court order.

Section 57

187. This section provides that, where a person eligible for a pension, gratuity, etc., payable out of public moneys is convicted of (or dealt with under the Probation of Offenders Act in respect of) an offence which involved fraud or dishonesty and which resulted in loss of public moneys, the loss may be recovered by deduction from the pension, gratuity, etc. This provision has been referred to already (*paragraph 11*) in connection with the repeal of the Forfeiture Act, 1870. It differs from the provisions affecting pensions, etc., in *section 2* of that Act in that, on the one hand, it provides only for recovery of moneys lost (and not for forfeiture) and, on the other hand, it is not confined either to felonies (it applies to any offence involving fraud or dishonesty) or to cases where a penalty of more than twelve months imprisonment is imposed (it applies to any case where the offence is proved).

Section 58

188. This section deals with disorderly conduct.

189. *Subsection (1)* deals with threatening, abusive or insulting words or behaviour or insulting signs, etc., intended or likely to cause a breach of the peace. This provision is similar to *section 14 (14)*—which is being repealed—of the Dublin Police Act, 1842, the main difference (apart from the fact that the 1842 Act applies only to Dublin) being that the maximum fine under that Act is £2 whereas a penalty of up to 3 months' imprisonment or a £50 fine or both is now proposed.

190. *Subsection (2)* is new to the law and is intended to deal with a type of rowdyism that falls short of conduct intended or likely to cause a breach of the peace. It makes it an offence to engage in a public place in any shouting, singing or boisterous conduct likely to annoy others, if this is done—

(a) between 10 p.m. and 7 a.m. or

(b) at any other time if persisted in by a person who has been warned by a member of the Garda Síochána to desist.

191. *Subsection (3)* provides, in effect, that a person committing an offence under this section may be arrested if he persists in the misconduct.

Section 59

192. This section is intended to replace section 13(2) of the Criminal Justice Act, 1951, which deals with unlawful possession of any article. Difficulties were experienced in the drafting of suitable charges under section 13 (2).

193. *Subsection (1)* makes it an offence for a person knowingly and without lawful authority to have in his possession or on his premises or to convey in any manner anything obtained by himself or by any other person in contravention of the criminal law. *Subsection (2)* provides that the Court, if it considers it reasonable to do so, may accept, as establishing a *prima facie* case, evidence of the circumstances in which the article was found in the defendant's possession, etc. The power of arrest given by section 13 (1) of the 1951 Act is now provided for in section 12 (7) of the Bill. Section 13 of the 1951 Act is being repealed.

Section 60

194. The object of this section is, on the one hand, to confirm the existing law that a person who is being imprisoned has a right to be able to ascertain from the terms of the warrant what the offence is, where he is to be detained and for how long (see, for instance, the forms of warrant prescribed by the District Court Rules, 1948, which provide for these particulars to be included), but, on the other hand, to ensure that if there happens to be an omission or defect in the warrant, in the matter of showing these particulars, the prisoner will not on that account alone be entitled to be released: instead, the section provides that he will be entitled to have the warrant corrected so that the particulars may be properly shown and, furthermore, it requires the person who issued the warrant or anybody acting in his place, if any such omission or defect comes to his notice even otherwise than on the application of the prisoner, to correct it. (This, of course, does not deprive the prisoner of the right to release if, apart from this kind of omission or defect in the warrant, he can show that his imprisonment is not justified.)

195. *Subsection (1)* provides that a committal warrant is to include the particulars mentioned in the preceding paragraph.

196. *Subsection (2)* provides that custody under a warrant will not be unlawful merely because the warrant does not sufficiently state the particulars required by *subsection (1)* or because there is an error or other defect in the particulars that are included in accordance with that subsection and it goes on to make provision for the correction of the omission or defect as mentioned in *paragraph 194*.

197. *Subsection (3)* is a procedural provision.

Section 61

198. This section provides that a warrant, summons, decree or similar document will continue to be valid notwithstanding that the person who issued it (District Justice, Peace Commissioner or District Court Clerk) has died or ceased to hold office. The section is

intended as a statutory replacement of Rule 18 of the District Court Rules, 1948.

Section 62

199. This section, in conjunction with the Third Schedule, provides for modifications in the Defence Act, 1954. The object is to keep military law under that Act in line with the ordinary criminal law by incorporating in that Act such amendments as the abolition of the distinctions between felony and misdemeanour, the abolition of penal servitude and hard labour and related amendments.

*An Roinn Dli agus Cirt,
Bealtaine, 1968.*