



AN BILLE UM AN DLI COIRIUIL, 1976
CRIMINAL LAW BILL, 1976

EXPLANATORY MEMORANDUM

General

1. The Bill proposes to make a number of amendments in respect of the criminal law and powers of enforcement and investigation. The maximum penalties for certain offences (in particular, offences under the Offences against the State Act, 1939) are increased. Certain new offences are created in respect of incitement to join unlawful organisations, of aiding, facilitating or arranging escapes from lawful custody and of giving false information (for example, bomb hoaxes). The Garda Síochána are given new or increased powers to search places or vehicles under a warrant issued by a superintendent and to search vehicles stopped during investigation of certain offences; and members of the Defence Forces when acting in connection with the investigation of similar offences in response to a request by the Garda Síochána for assistance are given powers of arrest and search and power to stop vehicles similar to the powers of the Garda Síochána when acting in connection with the investigation of these offences.

2. *Section 1* is the definitions section.

3. *Section 2* provides for increased maximum penalties for a number of offences under the Offences against the State Act, 1939, as set out in the table hereunder. (The statement of the subject of the section in each case follows the wording of the side note to the section in the 1939 Act).

Section of 1939 Act	Subject of section	Present maximum penalty	Proposed maximum penalty
6	Usurpation of functions of government	10 years' penal servitude	20 years' imprisonment
7	Obstruction of government	7 years' penal servitude	20 years' imprisonment
15	Unauthorised military exercises prohibited	2 years' imprisonment	15 years' imprisonment
21	Prohibition of membership of an unlawful organisation	2 years' imprisonment	7 years' imprisonment
27	Prohibition of certain public meetings	3 months' imprisonment or fine of £50 or both	12 months' imprisonment or fine of £500 or both

4. *Section 3* creates a new offence of inciting or inviting persons to join an unlawful organisation. The maximum penalty proposed is imprisonment for 10 years.

5. *Section 4* amends section 25 of the 1939 Act, which relates to the closing of buildings. The Bill proposes to increase the period of operation of a closing order made by a member of the Garda Síochána not below the rank of chief superintendent under subsection (1) of section 25 of the 1939 Act. Under section 25 a building may be closed for a period of three months in the first instance and this period may be extended for one further period of three months. *Section 4* proposes to allow the building to be closed for an initial period of up to twelve months and then for a further period or

periods of up to twelve months in each case but so that the total period of closure shall not exceed three years.

6. *Section 5* proposes to replace section 29 of the 1939 Act by a new section. It empowers a member of the Garda Síochána not below the rank of superintendent, where he is satisfied that there is reasonable ground for believing that any evidence relating to the commission or intended commission of an offence under the Bill, or the 1939 Act or an offence that is a scheduled offence for the purposes of Part V of that Act is to be found in any place, to issue a search warrant authorising a member of the Garda Síochána not below the rank of sergeant to search that place and the member authorised may be accompanied by any members of the Garda Síochána or the Defence Forces. A maximum penalty of 5 years' imprisonment, on conviction on indictment, is provided for obstructing or attempting to obstruct a search or refusing to give name and address or giving a false or misleading name or address.

The present section 29 (which also provides for the issue of search warrants) is concerned primarily with *documentary* evidence. The new section applies to any evidence. It also extends the range of offences to which the warrant may relate and provides that a sergeant of the Garda Síochána (rather than an inspector as at present) may be named as the person to execute the warrant.

7. *Section 6* relates to escape from lawful custody. Escaping from lawful custody is a common law offence and the section does not propose to alter that position. Aiding a prisoner to escape or attempt to escape is a statutory offence (section 4 of the Tumultuous Risings (Ireland) Act, 1831, section 18 of the Convict Prisons (Ireland) Act, 1854 and section 32 of the Prisons (Ireland) Act, 1856). *Section 6* of the Bill is designed to provide, in *subsection (1)*, a modern provision in relation to aiding escapes from custody. *Subsection (1)* also makes it an offence to do certain things in order to give assistance to an escaped prisoner to evade recapture or in order to injure any person or property in a prison. *Subsection (2)* is a provision to penalise the unauthorised taking of material into or out of a prison. (Section 19 of the Convict Prisons (Ireland) Act, 1854, prohibits the bringing in and carrying out of unauthorised material, but only in respect of "convict prisons". Section 34 of the Prisons (Ireland) Act, 1856, prohibits the taking of unauthorised material into any prison but it does not prohibit the taking of such material out of a prison). The maximum penalty proposed for an offence under *subsection (1)* is imprisonment for 10 years and under *subsection (2)* for 5 years.

Subsection (3) empowers a prison officer in the interests of security to search prisoners or visitors to a prison. The Prison Rules provide for such searching and the object of the section is to provide for it by statute.

8. *Section 7* gives the Garda Síochána certain powers in relation to persons in custody "under the provisions of any enactment . . . under which persons may be arrested, kept in custody and questioned". At present, section 30 of the 1939 Act, gives power of arrest, custody and questioning and such a power is also proposed in the *Emergency Powers Bill, 1976*. *Section 7* of the Bill is intended to apply to persons in custody under either of these provisions. *Subsection (1)* sets out the proposed Garda powers. *Subsection (2)* relates to obstruction of the Gardaí when exercising such powers and related matters and provides a maximum penalty of 5 years' imprisonment.

9. *Section 8* relates to situations in which the Gardaí require vehicles to halt (e.g. at road check points) when they with reasonable cause suspect that offences of the kind specified in *subsection (1)* have been, are being or are about to be committed. *Subsection (2)* authorises a Garda in these circumstances to search a vehicle and if, before or after the search, he with reasonable cause suspects that any occupant of the vehicle is concerned in an offence to which the section applies or that there is evidence of such an offence in the vehicle

or on any such occupant, the Garda may search any or all of the occupants of the vehicle. *Subsection (3)* empowers the Garda Síochána to use reasonable force to compel a person to comply with a requirement to stop a vehicle—the Garda power to require a driver to stop a vehicle is in section 109 of the Road Traffic Act, 1961. The subsection also provides that the Gardaí may place a barrier or other device in the path of a vehicle to force it to stop.

10. *Section 9* provides that in the course of any search by a member of the Gardaí, the prison staff or the Defence Forces anything found that such member believes to be evidence of any offence or suspected offence may be seized and retained for use as evidence in any criminal proceedings or proceedings for a breach of prison discipline. The item seized may be retained for a reasonable period and, if proceedings are commenced, until the conclusion of proceedings where the item is required for use in evidence. The section also provides that the Police Property Act, 1897, shall thereafter apply.

11. *Section 10*, in *subsection (1)*, prohibits the unauthorised possession by a prisoner of any photograph, sketch etc. of any prison, Garda station or courthouse. *Subsection (2)* contains a similar prohibition in relation to persons in the precincts of a prison, Garda station or courthouse who are visiting or have visited a prisoner there. *Subsection (3)* provides for a maximum penalty of 5 years' imprisonment.

12. *Section 11* provides that the offences of kidnapping, false imprisonment and "hi-jacking" of vehicles shall be felonies (*subsection (1)*) and that a person guilty of kidnapping or guilty of false imprisonment shall be liable on conviction on indictment to imprisonment for life (*subsection (2)*). One effect of this section is that a person who assists a person guilty of one of the offences mentioned to evade arrest or prosecution (e.g. by harbouring him) will be liable to be punished as an accessory after the fact to the principal offence. Another effect is to provide a power of arrest without warrant.

13. *Section 12* is designed to deal primarily with the matter of "bomb hoaxes" etc. The making of "hoax" telephone calls is an offence under section 13 of the Post Office (Amendment) Act, 1951, but the penalty provided on conviction of the offence under that Act is a fine not exceeding £10 or a term of imprisonment not exceeding one month or both. *Section 12* provides for a maximum penalty of 5 years' imprisonment for an offence under that section.

14. *Section 13* provides in *subsection (1)* that a sentence of penal servitude or imprisonment or of detention in St. Patrick's Institution passed on a person for an offence committed while he is serving any such sentence shall be consecutive on the sentence that he is serving, subject to the qualification that, in a case where two or more consecutive sentences as required by the section are passed by the District Court, the aggregate term of imprisonment or detention in respect of those consecutive sentences is not to exceed twelve months.

15. *Section 14* is an amending provision to provide that the definition of "document" in the 1939 Act as amended by section 5 of the Offences against the State (Amendment) Act, 1972, shall not apply in relation to the provisions of section 13 or 14 of the 1939 Act. Section 5 of the 1972 Act extended the definition of "document" in the Act of 1939 so as to apply it to certain things such as photographs, discs, tapes and films. Sections 13 and 14 of the 1939 Act require printers of "documents" to record the names and addresses of the persons for whom they have printed the documents and their own names and business addresses.

16. *Section 15* confers powers of arrest and search in relation to specified offences on members of the Defence Forces whose assistance is sought by the Garda Síochána in certain circumstances. *Subsection (1)* provides that these powers may be exercised only in accordance with *subsection (2)*. *Subsection (2)* provides that, whenever a

member of the Garda Síochána not below the rank of superintendent requests an officer of the Defence Forces to make members of the Defence Forces available for the purpose of the exercise of the powers conferred by the section during a period specified in the request, the officer may make members of the Defence Forces available for that purpose. A member of the Defence Forces made available in this way may, while on duty in uniform during the period specified in the request, exercise the powers conferred by subsections (3) and (4). By subsection (3) a member of the Defence Forces who with reasonable cause suspects that an offence to which section 8 of the Bill applies has been, is being or is about to be committed may require a person to stop a vehicle. The subsection authorises the member to search a vehicle and if, before or after the search of the vehicle, he suspects with reasonable cause that any occupant of the vehicle is concerned in an offence to which the section applies or that there is evidence of such an offence in the vehicle or on any occupant of the vehicle, he may search any or all of the occupants. The subsection also provides that the Defence Forces may place a barrier or other device in the path of a vehicle to force it to stop. The powers conferred on the Defence Forces by subsection (3) of this section are similar to the powers being given to the Garda Síochána by section 8 of the Bill.

Subsection (4) empowers a member of the Defence Forces to arrest without warrant a person whom he with reasonable cause suspects of committing, having committed or being about to commit an offence to which section 8 of the Bill applies if a member of the Garda Síochána would be entitled, if he so suspected, to arrest the person. For the purpose of arresting a person under this subsection, a member of the Defence Forces will have the same power to enter and search any building or part of a building or any vehicle etc. as a member of the Garda Síochána would have in like circumstances.

Subsection (5) provides that a person arrested under the section shall, as soon as may be, be delivered into the custody of the Garda Síochána or released within six hours from the time of his arrest.

Subsection (6) provides that when effecting an arrest of a person under the section a member of the Defence Forces complies with any rule of law requiring him to state the ground of arrest if he states that he is effecting the arrest as a member of the Defence Forces because he suspects the person of committing, having committed or being about to commit an offence to which section 8 applies.

Subsection (7) provides for certification where a power is exercised under this section.

17. Section 16 provides, in subsection (1), for the short title. Subsection (2) of the section is a transitional provision the effect of which is that two sections affecting penalties and a section that declares certain offences to be felonies will not apply to offences committed before the passing of the Bill.

*Roinn Dlí agus Cirt,
Lúnasa, 1976.*