



**AN BILLE UM POST-PHAICÉID AGUS TEACHTAIREACHTAÍ
TEILEACHUMARSAÍDE A THASCRAHDH (RIALÁIL), 1992**

**INTERCEPTION OF POSTAL PACKETS AND
TELECOMMUNICATIONS MESSAGES (REGULATION) BILL,
1992**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of Bill

1. The purpose of the Bill is to place on a statutory basis the conditions under which the existing power of the Minister for Justice to issue warrants authorising the interception of postal packets (i.e., primarily, letters) and telecommunications messages (i.e., primarily, telephone calls) is to be exercised and to regulate the procedure for the issue of authorisations. The Bill provides that the only purposes for which interceptions may be authorised will be those of criminal investigation or the security of the State (*section 2 (1)*).

2. The Bill sets out in detail the procedure for applications for and the issue of warrants authorising interceptions. The procedure is similar to that followed at present. But in addition the Bill introduces two new provisions for controlling the exercise of the powers of the Minister for Justice in respect of interceptions. The first is for a designated judge of the High Court to keep the operation of the Act under review, to ascertain whether its provisions are being complied with and to report to the Taoiseach (*section 8*). The other new provision is that a person who believes that his communications have been improperly intercepted will be able to have his complaint investigated by a "Complaints Referee" who will be a serving judge of the Circuit Court or District Court, or a barrister or solicitor of 10 years' standing, appointed for the purpose and who will have power in an appropriate case, if he upholds the complaint, to quash the authorisation and make a binding recommendation for the payment of compensation to the complainant (*section 9*).

Section 1 (Definitions)

3. Most of the definitions are merely in order to save repetition in the main body of the Bill. Definitions that appear to be important are explained below in the paragraphs relating to the substantive provisions of the Bill to which the definitions relate. These definitions are those of "copy" (see paragraph 33), "interception" (see paragraph 12) and "serious offence" (see paragraph 15). The meaning of the expression "communication" is given in paragraph 4.

4. The expression "communication" is defined by *section 1* so as to cover both postal packets and telecommunications messages. The expression "telecommunications message" includes telephone calls, telex messages and also telegrams. The expression "postal packet" includes letters, postcards and parcels.

Section 2 (Authorisation of interceptions).

5. This section sets out the general requirements for the exercise by the Minister for Justice of his power to authorise interceptions. (As to the meaning of interception see paragraph 12).

6. *Subsection (1)* provides that interceptions may be authorised only for the purpose of criminal investigation or in the interests of the security of the State.

7. *Subsection (2)* provides that an authorisation shall be given by warrant signed by the Minister. In a case of exceptional urgency he may give it orally in the first instance; if given orally, it will have to be confirmed as soon as possible by a written warrant.

8. *Subsection (3)* provides that the Minister shall not give an authorisation unless he considers that the relevant conditions laid down by *section 4* (in the case of a warrant for the purpose of criminal investigation) or *section 5* (in the case of a warrant in the interests of the security of the State) stand fulfilled and that there has been no contravention of the requirements of *section 6* relating to the procedure for applications for authorisations.

9. *Subsection (4)* provides that the warrant shall bear the date of the authorisation to which it relates. (In the case of an oral authorisation as mentioned in paragraph 7 the warrant will bear the date of the oral authorisation as distinct from that of the warrant itself.) It will state whether the authorisation is in respect of postal packets or telecommunications messages or both. It will specify the postal address or telecommunications address (i.e. the telephone or telex number) in question. A warrant specifying a postal address will specify also the person or persons to whom the proposed interception relates unless the Minister considers that to restrict the authorisation in this way would be prejudicial to the purposes of the proposed interception. The warrant will also include a statement that the relevant requirements of the Act have been complied with. It may require the person to whom it is addressed (i.e. the person to carry out the interception) to disclose the intercepted material to the persons specified in the warrant.

10. *Subsection (5)* limits the duration of an authorisation to the period specified in the warrant, which must not exceed 3 months, and *subsection (6)* empowers the Minister to extend the duration for further periods not exceeding 3 months at a time. The same conditions as apply to the issue of an authorisation will apply to an extension.

11. *Subsection (7)* provides that the Minister may consult the judge designated under *section 8* before deciding whether to give or renew an authorisation in a particular case or in a case of any particular class.

12. The meaning of "interception" for the purpose of the Bill is given in the definition in *section 1*. In the case of a postal packet it will mean (stated shortly) opening, delaying or detaining the packet or doing anything to prevent its due delivery to the addressee. In the case of a telecommunications message interception will mean (again stated shortly) listening to or recording the message in the course of its transmission when either the speaker or the recipient has not consented to its being listened to or recorded. *Subparagraph (ii)* in each of the two *paragraphs (a)* and *(b)* of the definition also limits the meaning of "interception" to interceptions that, apart from a direction (by the Minister for Tourism, Transport and Communications) to An Post or Bord Telecom under section 110 of the Postal and Telecommunications Services Act, 1983, would constitute an offence of unlawful interception under that Act. The way in which the

power of the Minister for Tourism, Transport and Communications to issue such a direction is related to the power of the Minister for Justice to issue a warrant for interception is mentioned in paragraph 13 in relation to *section 3*. The effect of the two *subparagraphs (ii)* referred to above is to exclude from the Bill interceptions which would not in any event require a direction by the Minister for Tourism, Transport and Communications (or, hence, a warrant by the Minister for Justice) — for instance, opening an undeliverable letter.

Section 3 (Restriction of power under Act of 1983 to require interceptions).

13. Section 110 of the Postal and Telecommunications Services Act, 1983, provides that the Minister for Tourism, Transport and Communications may issue directions in writing to An Post or Bord Telecom for certain purposes. Among the directions that he may issue is a direction “to do . . . anything which he may specify from time to time as necessary in the national interest”. *Section 3* of the Bill provides that the Minister for Tourism, Transport and Communications may not give any direction requiring the interception of postal packets or telecommunications messages unless there is in force a corresponding authorisation by the Minister for Justice applying to the interception. The direction by the Minister for Tourism, Transport and Communications may be a specific one relating to particular authorisations given by the Minister for Justice or a general one relating to all such authorisations.

Section 4 (Conditions justifying interception for purpose of criminal investigation).

14. This section (read in conjunction with the definition of “serious offence” in *section 1* and with *section 6*) sets out the conditions which, in accordance with *section 2(3)*, the Minister for Justice must consider to stand fulfilled in order that he lawfully give an authorisation for the purpose of criminal investigation. These conditions are referred to in the following paragraphs.

15. The investigation must relate to a “serious offence” (actual, suspected or apprehended). “Serious offence” is defined in *section 1*. The offence must be one which meets *both* the following requirements, viz. (1) that it is one for which an adult would be liable to imprisonment for at least 5 years, the age of the actual offender being immaterial (*paragraph (a)* of the definition) and (2) that it is of a type specified in *paragraph (b)* of the definition, i.e., it involves loss of life, serious personal injury, serious loss of or damage to property or a risk of this; substantial gain; or that the offence is a specially serious one of its kind. The definition extends to conduct abroad which would be criminal if committed in the State. Ancillary offences such as attempts will be included only if the principal offence would be within the definition.

16. The investigations must be investigations being carried out by the Garda Síochána or another public authority charged with the investigation of offences of the kind in question (for example Customs and Excise) (*paragraph (a) (i) (I)*). In the case of an offence already committed or suspected to have been committed it will be necessary that other investigations (i.e. investigations not involving interception) have failed to produce, or produce sufficiently quickly, information concerning the offence or evidence to enable criminal proceedings to be taken for it (*paragraph (a) (i) (II)*) and that there is a reasonable prospect that the interception proposed will be of material assistance in providing information or evidence such as mentioned (*paragraph (a) (i) (III)*). In the case of an offence apprehended but not yet committed the requirement will be similar except that the purpose of the investigations and the proposed interceptions

will be the prevention of the offence or its detection if committed (*paragraph (a) (ii)*).

17. In all cases the Minister must consider that the importance of obtaining the information or evidence concerned is sufficient in all the circumstances to justify the interception notwithstanding the importance of preserving the privacy of postal packets and telecommunications messages (*paragraph (b)*).

Section 5 (Conditions justifying interception in interests of security of State).

18. Under this section the conditions justifying interception in the interests of the security of the State will be similar, subject to the differences between the matters involved, to the conditions set out in *section 4* in relation to interception for the purpose of criminal investigation. The situation contemplated by *section 5* is that there are reasonable grounds for believing that "particular activities that are endangering or likely to endanger the security of the State are being carried on or are proposed to be carried on" (*paragraph (a)*) and that investigations into the matter are being carried out by or on behalf of the person applying for the authorisation (*paragraph (b)*). The persons who may apply for the authorisation are specified in *section 6 (1) (a) (ii)* — *paragraph 20* below. *Paragraphs (c), (d) and (e)* of *section 5* require that similar conditions as to the need for interception (failure of other investigations etc.) must be satisfied as in the case of interceptions for the purpose of criminal investigation.

Section 6 (Applications for authorisations).

19. *Section 6* sets out the procedure that must be adhered to before the Minister for Justice may issue an authorisation for interception. In every case the procedure must be initiated by an application by the appropriate authority and the application must be considered by an officer of the Department of Justice nominated for the purpose by the Minister before being submitted to the Minister for his decision.

20. The requirements as to the making of the application are set out in *subsection (1)*. It must be made in writing. If the purpose of the proposed interception is that of criminal investigation, the application will be made by the Commissioner of the Garda Síochána. If it is for the security of the State, the application will be made either by the Commissioner or by a military officer of the rank of colonel or above designated by the Minister for Defence (*subsection (1) (a)*). An application by that officer will have to be accompanied by a recommendation in writing by the Minister for Defence (*subsection (1) (c)*). Every application will have to include sufficient information to enable the Minister for Justice to determine whether the relevant conditions justifying the issue of a warrant are fulfilled (*subsection (1) (b)*).

21. The nominated officer of the Department of Justice will consider the application and, after making any necessary enquiries, will make a *written* submission to the Minister for Justice stating whether in his opinion the conditions justifying the proposed interception are fulfilled (*subsection (2)*). For this purpose he may take into consideration other information already in his possession or information obtained after receipt of the application (*subsection (3)*). The Minister, however, will not be bound to accept the view of the nominated officer. In the absence of the nominated officer his duties will be discharged by another officer of the Minister designated by the Minister (*subsection (4)*).

Section 7 (Cesser of interceptions no longer required).

22. This section provides for the procedure for terminating interceptions when they are no longer required. If the Commissioner of

the Garda Síochána or the military officer designated under *section 6*, as may be appropriate, considers that interceptions are no longer required, he will have the duty without delay to inform the nominated officer of the Minister for Justice. The latter will have the duty without delay to inform the person to whom the warrant is addressed, whereupon the authorisation will cease to be in force. (This procedure is additional to the power of the Minister for Justice to cancel a warrant at any time and his duty to do so if the judge designated under *section 8* to review the operation of the Act informs the Minister that he considers that the warrant should be cancelled (paragraph 26 below).)

Section 8 (Review of operation of Act by judge of High Court).

23. This section provides for the review of the operation of the Act by a judge of the High Court. This is distinct from the procedure under *section 9* for a Complaints Referee to consider and adjudicate on complaints of alleged improper interception in particular cases.

24. The President of the High Court will, after consultation with the Minister for Justice, invite a serving judge to carry out the duties specified in the section and, if he accepts, the Government will designate him for the purposes of the Act (*subsection (1)*). His duties will consist of keeping the operation of the Act under review, ascertaining whether its provisions are being complied with and reporting to the Taoiseach, at intervals of not more than two years, in relation to the general operation of the Act and from time to time on any matters which he considers should be reported (*subsection (2)*). He may also communicate with the Taoiseach or the Minister for Justice on any matter concerning interceptions (*subsection (4)*).

25. For the purpose of his functions under the Act the designated judge will have power to investigate any case in which an authorisation has been given and have access to all the official documents relating to an authorisation or the application for it (*subsection (3)*). He will, therefore, be able to examine not only the documents in the possession of the Department of Justice but all other official documents, including those in the possession of the Garda Síochána, which might show whether or not the Minister was justified in issuing a warrant or whether the Commissioner of the Garda Síochána or the corresponding military officer was justified in making the application. Further, every person who was concerned in, or has information relevant to, the making of an application, the giving of a warrant or otherwise in the operation of any provision of the Act will be required to give this information on request to the judge (*subsection (5)*). The judge will be free to decide for himself from time to time what number — or proportion — of cases he will investigate for the purpose of satisfying himself that the Act is being complied with.

26. If the designated judge informs the Minister for Justice that in his opinion a particular authorisation should not have been given or renewed, or (because of circumstances arising later) should be cancelled, the Minister shall as soon as may be inform the Minister for Communications and cancel the warrant (*subsection (6)*).

27. The reports of the designated judge to the Taoiseach will be laid before the Oireachtas subject to the exclusion of any matter the publication of which the Taoiseach, after consulting the judge, considers would be prejudicial to the prevention or detection of crime or to the security of the State (*subsections (7) and (8)*). When laying the copies of the report the Taoiseach must state whether any matter has been excluded as mentioned.

Section 9 (Complaints procedure).

28. This section provides for the procedure by which a person who believes that a communication sent to or by him has been wrongly intercepted after the commencement of the Act may have the matter investigated by a "Complaints Referee" with legal qualifications as mentioned in paragraph 30 below who will have power to give the appropriate redress to the complainant if he considers the complaint to be justified.

29. *Subsection (1)* provides that a contravention of the provisions of *section 2, 6, 7 or 8 (6)*, or a failure to fulfil a condition specified in *section 4 or 5*, shall not render the authorisation concerned invalid or constitute a cause of action at the suit of a person affected, but this will not affect any cause of action for the infringement of a constitutional right. A contravention of *section 2, 6, 7 or 8 (6)* will be subject to investigation as provided by the section.

30. *Subsection (2)* establishes the office of the Complaints Referee. He will be a judge of the Circuit Court or the District Court or a practising barrister or practising solicitor of not less than 10 years' standing (*paragraph (b)*). The Referee will be appointed by the Taoiseach and hold office for a term of five years, which may be renewed for a similar term or terms (*paragraph (c)*). *Paragraph (d)* specifies the terms and conditions on which the Referee will hold office. He may resign at any time (*paragraph (e)*), but may be removed from office only for stated misbehaviour or incapacity and upon resolution by both Houses of the Oireachtas (*paragraph (f)*). The conditions as to removal from office are similar to the conditions for the removal of a judge from judicial office.

31. *Subsection (3)* contains the provisions mentioned in paragraph 28 above by which a person who believes that a communication sent to or by him after the commencement of the Act has been intercepted in the course of its transmission by An Post or Bord Telecom may apply to the Referee for an investigation of the matter.

32. Under *subsection (4)* the Referee will investigate, first, whether a relevant authorisation was in force at the material time. If there was none, he will have no further investigative function. (His function is to provide a remedy in the event of there being any abuse of the provisions of the Bill and the Bill has no concern with unauthorised interceptions — any such interception constitutes a criminal offence and is a matter to be dealt with under the criminal law by the prosecuting authorities and the courts.) If an authorisation was in force at the material time, the Referee will proceed to investigate whether there has been a contravention of any of the provisions of *section 2, 6, 7 or 8 (6)*.

33. If the Referee concludes that there has been a contravention of a provision of any of the sections mentioned in paragraph 32 above, he will take the action specified in *subsection (5)*. He will notify the applicant in writing of his conclusion (*paragraph (a)*), make a report of his findings to the Taoiseach (*paragraph (b)*) and, if he thinks fit, quash the authorisation, direct the destruction of any copy of the communications intercepted pursuant to it and make a recommendation for the payment to the applicant of a specified sum by way of compensation (*paragraph (c)*). For this purpose "copy" will include transcripts, extracts and summaries, whether or not in the form of documents (for example, tapes), and any record of the identities of the persons to or by whom the communication was sent. This is in accordance with the definition of "copy" in *section 1*.

34. *Subsection (6)* deals with the possibility that, although the Minister for Justice considered that all relevant conditions were fulfilled, including the condition that what was involved was a serious offence, the Referee believes that, although there was no contravention of any of the provisions in question, the Minister was mistaken in his assessment that the offence concerned was a "serious offence" within the definition in *section 1*. In this situation the Referee, after giving notice to the Minister, will refer the question whether the offence was a serious offence to the designated judge for his determination. If the judge agrees with the Referee that the offence was not a serious one, the Referee will take the same action (referred to in paragraph 33 above) as if he had found that there was a contravention of a provision of the Act referred to above. If the judge agrees with the Minister's assessment, the Referee will simply notify the applicant in writing that there was no contravention of the relevant provisions of the Act in relation to a relevant authorisation.

35. *Subsection (7)* provides that any notification by the Referee to the applicant, and any report by him to the Taoiseach, under *subsection (5)* or *(6)* shall state the effect of any order made by the Referee under the subsection in question.

36. *Subsection (8)* provides that, if the Referee comes to any conclusion other than those mentioned in *subsection (5)* or *(6)*, he will simply notify the applicant in writing that there was no contravention of the relevant provisions of the Act in relation to a relevant authorisation.

37. *Subsection (9)* provides that, subject to the provisions of *subsection (6)*, which allows the designated judge to determine whether an offence was a "serious offence", a decision of the Referee shall be final.

38. *Subsections (10)* and *(11)* make provisions, corresponding to those in *section 8 (3)* and *(5)* in the case of an investigation by the designated judge, for the Referee to have access, for the purpose of an investigation, to official documents, and to be entitled to call for information from persons concerned, in relation to an authorisation or the application for it.

39. *Subsection (12)* provides that the Minister for Justice shall implement any recommendation by the Referee for payment of compensation to the applicant under the relevant provisions of the section.

Section 10 (Provisions in relation to certain proceedings and evidence).

40. This section makes certain provisions in relation to legal proceedings which might involve the giving of evidence as to whether an authorisation of an interception was or was not given or whether an application for an authorisation was or was not made.

41. *Subsection (1)* provides that, subject to the two exceptions mentioned below, the consent of the Director of Public Prosecutions shall be necessary for the prosecution of certain offences relating to interceptions. One of the exceptions is that the subsection will not prevent a private person from issuing a summons or obtaining a warrant in respect of the offence, but the consent of the Director of Public Prosecutions will be required before the proceedings can be taken any further except by way of any remands. The other exception is that the subsection will not apply to proceedings brought by the Minister for Tourism, Transport and Communications, An Post or Bord Telecom.

42. *Subsection (2)* makes certain procedural provisions in relation to civil actions to which the subsection applies. These actions (specified

in *paragraph (a)* are actions in respect of any alleged act or omission that constitutes any of the offences specified in *subsection (1)* or that would constitute such an offence but for the exceptions provided for by section 84 (2) or 98 (2) of the 1983 Act. Broadly speaking, what are referred to are civil actions in respect of any alleged interception of a postal packet or telecommunications message.

43. *Paragraph (b)* of *subsection (2)* provides that in any action to which the subsection applies any question whether the act or omission in question was done or made shall be determined before the determination of any question whether an authorisation was given and that, accordingly, unless and until it is determined that the act or omission was done or made, no person to whom *paragraph (b)* applies — these persons are specified in *paragraph (d)*, referred to in paragraph 45 below — shall give any evidence, or be asked any question, and nothing shall be made the subject of discovery, or be disclosed, produced or alleged by the defence, that would show or tend to show that an authorisation was or was not given or that an application for an authorisation was or was not made or that proposals for or steps towards the making of an application were or were not made or taken. This prohibition is subject to *paragraph (e)* of the subsection, as mentioned in paragraph 46 below.

44. *Paragraph (c)* of *subsection (2)* provides that if it is determined, in accordance with *paragraph (b)*, that the act or omission in question was done or made, the court shall, on the application of any party to the proceedings, allow any amendment to the pleadings in the action that may be necessary for the determination of the question whether an authorisation was given. This provision is necessary because owing to *paragraph (b)* the defence will not have been able to plead the existence of the authorisation (if one was given) before it was determined that the act or omission in question took place.

45. The persons to whom *paragraph (b)* of *subsection (2)* applies, and who accordingly will be precluded from giving evidence as to whether an authorisation was given or an application for one was made, are specified in *paragraph (d)*. They comprise, broadly speaking, persons who might, by virtue of their position in the public service, have knowledge of these matters. Specifically, they comprise civil servants, members of the Defence Forces or the Garda Síochána, any person in the employment of An Post or Bord Telecom or any other person on whom a function is conferred by the Act (the last will include the designated judge and the Complaints Referee).

46. *Paragraph (e)* of *subsection (2)* provides that the subsection shall not apply if a person has been convicted of an offence referred to in *subsection (1)* in respect of the act or omission in question.

47. *Subsection (3)* provides that no person shall be compellable in any proceedings—apart from some specified exceptions to make discovery of any document, to produce or disclose any document or thing, or to give evidence or information, to a court or tribunal or to any person (other than the designated judge or the Complaints Referee) that shows or tends to show any of the matters (relating to authorisations and applications for them) specified in *subsection (2) (b) (i)* or *(ii)*, as mentioned in paragraph 43 above. This provision is subject to *subsection (4)*, referred to in paragraph 48 below.

48. *Subsection (4)* provides that, where a person is convicted of an offence referred to in *subsection (1)* or a related or ancillary offence, evidence of the conviction shall be admissible in any proceedings for the purpose of proving, where to do so is relevant to any issue in the proceedings, that he committed the offence. (The provision will

constitute an exception to the general rule of evidence that a conviction of a criminal offence is not admissible in evidence in civil proceedings to prove that the person convicted committed the act alleged against him in the civil action). *Subsection (4)* provides also that *subsection (3)* shall not apply in relation to evidence of the conviction.

49. *Subsection (5)* provides that in any case where evidence of any of the matters (relating to authorisations and applications for them) specified in *subsection (2) (b) (i) or (ii)* is admissible in any legal proceedings, a certificate by a person authorised for the purpose by the Minister for Justice shall be admissible as evidence of the facts stated in the certificate (*paragraph (a)*). A document purporting to be such a certificate will be deemed to be such unless the contrary is shown (*paragraph (b)*). The subsection will avoid the need to call a witness to prove formally, for example, that a warrant was or was not issued in the exceptional case where such evidence is required.

Section 11 (Retention of official documents).

50. *Subsection (1)* provides that all the official documents relating to an authorisation and the application for it shall be retained for at least three years from the date when the authorisation ceases to be in force. These documents may be required by the designated judge or the Complaints Referee for the purposes of an investigation. The documents will include, for example, documents in the possession of the Garda Síochána, An Post or Bord Telecom as well as those in the Department of Justice. *Subsection (2)* provides that this requirement shall not apply to copies of a communication intercepted pursuant to an authorisation (which, under *section 12*, referred to in paragraph 51 below, are to be destroyed as soon as their retention is no longer necessary).

Section 12 (Restriction of disclosure of existence of authorisations and of matter intercepted).

51. *Subsection (1)* provides that the Minister for Justice shall ensure that such arrangements as he considers necessary exist to limit to "the minimum necessary" the disclosure of the fact that an authorisation has been given and the contents of any communication that has been intercepted pursuant to an authorisation (*paragraph (a)*) and to secure that copies (as defined in *section 1*) of any such communication are not made to "any extent greater than is necessary" and are destroyed "as soon as their retention is no longer necessary" (*paragraph (b)*). *Subsection (2)* defines "necessary" as meaning "necessary for the purpose of the prevention or detection of serious offences" (defined in *section 1*, as mentioned in paragraph 15 above) "or in the interests of the security of the State". The adequacy of the arrangements required by this section will be among the matters which will be investigated by the designated judge in accordance with his duty under *section 8 (2)* to ascertain whether the provisions of the Act are being complied with.

Section 13 (Amendment of Act of 1983).

52. Section 98 (2) of the Postal and Telecommunications Services Act, 1983 provides that the provisions of section 98 (1) of that Act creating offences of interception of telecommunications messages and related offences are not to apply to the cases specified in *section 98 (2)*, including the case where the interception is in obedience to a warrant. There are somewhat similar offences under section 45 of the Telegraph Act, 1863 and under the second paragraph of section 11 of the Post Office (Protection) Act, 1884. *Subsection (1)* of *section 13* of the present Bill provides that the exemptions mentioned shall apply in those cases and also in the case of the offence under the new *subsection (5)* of section 98 of the 1983 Act which is inserted in that

section by *section 13 (3)* of the Bill as mentioned in paragraph 54 below.

53. *Subsection (2)* inserts a new subsection (2A) in section 98 of the 1983 Act. This relates to the process (known as "metering") by which Bord Telecom in the normal course of business keep records of the making and duration of telephone calls. The new section 98 (2A) will make it an offence for a person employed by Bord Telecom to disclose to any person the use made of telecommunications services provided for any other person unless the disclosure is made in the circumstances specified in the subsection (at the request or with the consent of the subscriber; for the prevention or detection of crime or for the purpose of criminal proceedings; in the interests of the security of the State; in pursuance of an order of a court; for the purpose of civil proceedings in any court; or in the course of the employee's duty as such employee (for example, for the purpose of preparing the subscriber's account)). The maximum penalties for the offence will, under section 4 (1) of the 1983 Act, be the same as those for other offences under section 98 of that Act (a fine of £800 or 12 months' imprisonment, or both, on summary conviction; a fine of £50,000 or five years' imprisonment, or both, on conviction on indictment).

54. *Subsection (3)* substitutes two new subsections (5) and (6) for the present subsection (5) of section 98 of the 1983 Act. The new subsection (5) of that section makes it an offence to disclose the existence, substance or purport of a telecommunications message that was transmitted before the vesting day (1 January 1984) when responsibility for telecommunications services was transferred to Bord Telecom. (The corresponding offence under subsection (1) of section 98 of the 1983 Act applies only to telecommunications messages transmitted by Bord Telecom and therefore does not apply to messages transmitted before the vesting day.) The penalties for the offence will be those mentioned in paragraph 53 above. The exemptions provided for by subsection (2) of section 98 of the 1983 Act will (as mentioned in paragraph 52 above) apply to the offence under the new subsection (5) inserted by *section 13 (3)* of the Bill. The new *subsection (6)* which is also inserted by the latter provision in section 98 of the 1983 Act replaces the definition of "intercept" in the existing subsection (5) of section 98 by a new definition which is similar to the definition of "interception" in *section 1* of the Bill apart from drafting differences on account of the fact that the definition in the new subsection (6) of section 98, unlike the definition in *section 1* of the Bill, is for the purpose of criminal offences (those under section 98).

Section 14 (Repeal of section 18 of Official Secrets Act, 1963).

55. This section repeals section 18 of the Official Secrets Act, 1963 (No. 1). Section 18, which reproduces section 4 of the Official Secrets Act, 1920 (c.75), empowers the Minister for Justice by warrant to require the production to him of telegrams sent to or received from places outside the State.

Section 15 (Expenses).

56. This section, which is in common form, provides for the payment of expenses incurred by the Ministers concerned in the administration of the Act.

Section 16 (Short title and transitional provision).

57. This section gives the short title of the Bill and makes a transitional provision for warrants in force at the passing of the Act to continue in force, unless previously cancelled, for one month.

Financial implications

58. *Section 9* provides for the appointment of a Complaints Referee. If that person were to be other than a serving judge a fee might be payable but, as the work would be part-time and probably occasional it would not be significant. There is also the possibility that a Complaints Referee might recommend the award of compensation to an aggrieved person but the financial implications of that are unquantifiable. The Bill has no staffing implications.

*An Roinn Dlí agus Cirt,
Aibreáin, 1992.*

28. Section 9 provides for the appointment of a Complaints Referee. If that person were to be other than a serving judge a fee might be payable but as the work would be part-time and probably occasional it would not be significant. There is also the possibility that a Complaints Referee might recommend the award of compensation to an aggrieved person but the financial implications of that are unquantifiable. The Bill has no financial implications.

29. Section 10 provides for the appointment of a Complaints Referee. If that person were to be other than a serving judge a fee might be payable but as the work would be part-time and probably occasional it would not be significant. There is also the possibility that a Complaints Referee might recommend the award of compensation to an aggrieved person but the financial implications of that are unquantifiable. The Bill has no financial implications.

34. Subsection (3) substitutes two new subsections (5) and (6) for the present subsection (5) of section 98 of the 1983 Act. The new subsection (5) is an offence in relation to an offence in relation to the existence, substance or purpose of a telecommunication message that was transmitted before the vesting day (1 January 1984) when responsibility for telecommunication services was transferred to British Telecom. (The corresponding offence under subsection (1) of section 98 of the 1983 Act applies only to telecommunication messages transmitted by British Telecom and other telecommunication services transmitted before the vesting day.) The penalties for the offence will be those mentioned in paragraph 52 above. The maximum fine provided for by subsection (2) of section 98 of the 1983 Act will (as mentioned in paragraph 52 above) apply to the offence under the new subsection (5) inserted by section 13 (3) of the Bill. The new subsection (6) which is also inserted by the latter provision in section 98 of the 1983 Act replaces the definition of "intercept" in the existing subsection (5) of section 98 by a new definition which is similar to the definition of "interception" in section 7 of the Bill apart from drafting differences on account of the fact that the definition in the new subsection (6) of section 98, unlike the definition in section 7 of the Bill, is for the purpose of criminal offences (those under section 98).

Section 14 (Repeal of section 18 of Official Secrets Act, 1951)

35. This section repeals section 18 of the Official Secrets Act, 1951 (No. 1), Section 18 which reproduces section 4 of the Official Secrets Act, 1920 (c. 75), empowers the Minister for Home by warrant to require the production to him of telegrams sent or received from places outside the State.

Section 15 (Expenses)

36. This section, which is in common form, provides for the payment of expenses incurred by the Ministers concerned in the administration of the Act.

Section 16 (Short title and transitional provisions)

37. This section provides for the short title of the Bill and makes a provision for the transitional provisions and savings to be made in connection with the commencement of the Act.

W. P. 2522/B. 1.12. 492 C.M.L. (2.1952) (1)