DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL 2004
CRIMINAL JUSTICE BILL 2004

LEASUITHE COISTE
COMMITTEE AMENDMENTS

[No. 34 of 2004] [11 April, 2006]

[Printers Reference]

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL 2004
—ROGHCHOISTE

CRIMINAL JUSTICE BILL 2004
—SELECT COMMITTEE

Leasuithe Breise
Additional Amendments

149. In page 25, before section 24, but in Part 4, to insert the following new section:

"Commission of offence for criminal organisation.

72.—(1) A person who commits a serious offence for the benefit of, at the direction of, or in association with, a criminal organisation is guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall not be necessary for the prosecution to prove that the person concerned knew any of the persons who constitute the criminal organisation concerned.

(3) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 149

1.

In section 72, to delete subsection (1) and substitute the following:

"Commission of offence on behalf of criminal organisation.

72.—(1) A person who commits a serious offence for the benefit of, at the direction of, or in association with, a criminal organisation shall be guilty of an offence.".

—Jim O'Keeffe.

2.

In section 72(3), to delete "or both" and substitute "or to both".

—Jim O'Keeffe.

160. In page 25, before section 24, but in Part 4, to insert the following new section:

"Amendment of section 27 of Act of 1977.

83.—Section 27 of the Act of 1977 is amended—

(*a*) in subsection (3A)—

(i) by the substitution of "an offence under section 15A or 15B of this Act" for "an offence under section 15A", and

(ii) in paragraph (*a*), by the substitution of "subsections (3B) to (3CC) of this section" for "subsections (3B) and (3C) of this section",

(*b*) by the insertion of the following subsection after subsection (3A):

"(3AA) The court, in imposing sentence on a person for an offence under section 15A or 15B of this Act, may, in particular, have regard to whether the person has a previous conviction for a drug trafficking offence.",

(*c*) in subsection (3B), by the substitution of "an offence under section 15A or 15B of this Act" for "an offence under section 15A",

(*d*) by the insertion of the following subsection after subsection (3C):

"(3CC) The court, in considering for the purposes of subsection (3C) of this section whether a sentence of not less than 10 years imprisonment is unjust in all the circumstances, may have regard, in particular, to—

(*a*) whether the person convicted of the offence concerned was previously convicted in respect of a drug trafficking offence, and

(*b*) whether the public interest in preventing drug trafficking would be served by the imposition of a lesser sentence.",

(*e*) in subsection (3I), by the substitution of "an offence under section 15A or 15B of this Act" for "an offence under section 15A of this Act" and the substitution of "each of those offences" for "that offence", and

(*f*) by the insertion of the following subsection after subsection (3J):

"(3K) In subsections (3AA) and (3CC) of this section 'drug trafficking offence' has the meaning it has in section 3(1) of the Criminal Justice Act 1994.".".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 160

1.

In the inserted subsection (3CC)(*b*), after "sentence" to insert the following:

"and

(*c*) the circumstances in which the offence occurred including any aggravating and mitigating factors, extent of violent behaviour, character, age, previous criminal record, family circumstances, expressions of remorse, whether alternatives to custody would be a more appropriate sentence or part thereof and the imperative to protect the public from harm".

—Aengus O'Snodaigh.

2.

In the inserted section 83(*b*), to delete "may, in particular" and substitute "shall".

—Jim O'Keeffe.

3.

In the inserted section 83(*d*), to delete "may" and substitute "shall".

—Jim O'Keeffe.

169. In page 25, before section 24, but in Part 4, to insert the following new section:

"Discharge from obligation to comply with requirements of this Part.

92.—(1) A person who, by reason of *sections 88** and *89***, is subject to the requirements of this Part for a period of 12 years or 6 years (in the case of a person to whom *section 89(4)*** applies) may apply to the court for an order discharging the person from the obligation to comply with those requirements on the ground that the interests of the common good are no longer served by his or her continuing to be subject to them.

(2) An application under this section shall not be made before the expiration of the period of 8 years, or 4 years in the case of a person to whom *section 89(4)*** applies, from the date of the applicant's release from prison.

(3) The applicant shall, not later than the beginning of such period before the making of the application as may be prescribed, notify the superintendent of the Garda Síochána of the district in which he or she ordinarily resides or has his or her most usual place of abode of his or her intention to make an application under this section.

(4) That superintendent or any other member of the Garda Síochána shall be entitled to appear and be heard at the hearing of that application.

(5) On the hearing of an application under this section, the court shall, if it considers that it is appropriate to do so in all the circumstances of the case, make an order discharging the applicant from the obligation to comply with the requirements of this Part.

(6) In considering an application under this section, the court may have regard to any matter that appears to it to be relevant and may, in particular, have regard to the character of the applicant, his or her conduct after conviction for the offence concerned and the offence concerned.

(7) If the court makes an order discharging the applicant from the obligation to comply with the requirements of this Part, the court shall cause the Garda Síochána to be notified, in writing, of that discharge.

(8) The jurisdiction of the court in respect of an application under this section may be exercised by the judge of the circuit where the applicant ordinarily resides or has his or her most usual place of abode.

(9) Proceedings under this section shall be heard otherwise than in public.

(10) In this section—

"applicant" means the person referred to in *subsection (1)*;

"court" means the Circuit Court;

"date of the applicant's release from prison" means the date on which the applicant's sentence of imprisonment for the purposes of *section 89(3)*** expires or, as the case may be, his or her remission from the sentence begins.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 169

1.

In subsection (3), to delete "the Garda Síochána" and substitute "an Garda

Síochána".

—Jim O'Keeffe.

2.

In subsection (4), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

3.

In subsection (7), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

4.

In section 92, to delete subsection (3).

—Jim O'Keeffe.

5.

In section 92(9), to delete "shall" and substitute "may".

—Jim O'Keeffe.

170. In page 25, before section 24, but in Part 4, to insert the following new section:

"Offences in connection with notification requirements.

93.—(1) A person who—

(*a*) fails, without reasonable excuse, to comply with *subsection (1)*, *(2)*, *(3)* or *(4)* of *section 91**, or

(*b*) notifies to the Garda Síochána, in purported compliance with that *subsection (1)*, *(2)*, *(3)* or *(4)*, any information which he or she knows to be false or misleading in any respect,

shall be guilty of an offence.

(2) A person is guilty of an offence under *subsection (1)(a)* on the day on which he or she first fails, without reasonable excuse, to comply with *subsection (1)*, *(2)*, *(3)* or *(4)*, as the case may be, of *section 91** and continues to be guilty of it throughout any period during which the failure continues; but a person shall not be prosecuted under that provision more than once in respect of the same failure.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(4) In proceedings for an offence under *subsection (1)(a)* a statement on oath by a member of the Garda Síochána referred to in *subsection (5)* that no notification of the matters concerned was given by the defendant to the Garda Síochána by any of the means referred to in *section 91(8)** shall, until the contrary is shown, be evidence that no such notification was given by the defendant.

(5) The member of the Garda Síochána referred to in *subsection (4)* is a member not below the rank of sergeant who, from his or her evidence to the court, the court is satisfied—

(*a*) is familiar with the systems operated by the Garda Síochána for recording the fact that particular information has been received by them, and

(*b*) has made all proper inquiries in ascertaining whether a notification by the defendant of the matters concerned was received by the Garda Síochána.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 170

1.

In subsection (1)(*b*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

2.

In subsection (4), to delete "the Garda Síochána" where it firstly occurs and substitute "an Garda Síochána".

—Jim O'Keeffe.

3.

In subsection (4), to delete "the Garda Síochána" where it secondly occurs and substitute "an Garda Síochána".

—Jim O'Keeffe.

4.

In subsection (5), to delete "the Garda Síochána" where it firstly occurs and substitute "an Garda Síochána".

—Jim O'Keeffe.

5.

In subsection (5)(*a*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

6.

In subsection (5)(*b*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

7.

In section 93(2), to delete "is guilty" and substitute "shall be guilty".

—Jim O'Keeffe.

8.

In section 93(3), to delete "or both" and substitute "or to both".

—Jim O'Keeffe.

9.

In section 93, to delete subsections (4) and (5).

— Jim O'Keeffe.

173. In page 25, before section 24, but in Part 4, to insert the following new section:

"Proof of foreign conviction in certain cases.

96.—(1) In proceedings against a person for an offence under *section 93** (where the person is a person referred to in *section 94(1)***), the production to the court of a document that satisfies the condition referred to in *subsection (2)* and which purports to contain either or both—

(*a*) particulars of the conviction in a state, other than the State, of that person for an offence and of the act constituting the offence,

(*b*) a statement that, on a specified date, that person was subject to the first-mentioned requirement in *section 94(1)(b)(ii)***,

shall, without further proof, be evidence, until the contrary is shown, of the matters stated in it.

(2) The condition mentioned in *subsection (1)* is that the document concerned purports to be signed or certified by a judge, magistrate or officer of the state referred to in that subsection and to be authenticated by the oath of some witness or by being sealed with the official seal of a minister of state of that state (judicial notice of which shall be taken by the court).

(3) That condition shall be regarded as being satisfied without proof of the signature or certification, and the authentication of it, that appears in or on the document.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 173

1.

In section 96(1), after "matters stated", to delete "in it" and substitute "therein".

—Jim O'Keeffe.

2.

In section 96(3), to delete "That condition" and substitute "The condition mentioned in *subsection (1)*".

—Jim O'Keeffe.

174. In page 25, before section 24, but in Part 4, to insert the following new section:

"PART 10

SENTENCING

Definitions (*Part 10*).

97.—In this Part, unless the context otherwise requires—

"authorised person" means a person who is appointed in writing by the Minister, or a person who is one of a class of persons which is prescribed, to be an authorised person for the purposes of this Part;

"a direction" means a direction given by the Minister under section 2 of the Criminal Justice Act 1960 authorising the release of a person from prison (within the meaning of that section) for a temporary period;

"offender" means a person in respect of whom a restriction on movement order is, or may be, made under *section 100**;

"probation and welfare officer" means a person appointed by the Minister to be—

(*a*) a probation officer,

(*b*) a welfare officer, or

(*c*) a probation and welfare officer;

"restriction on movement order" means an order made by a court under *section 100**.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 174

1.

In section 97, after the definition of "a direction", to insert the following:

" "governor" includes, in relation to a prisoner, a person for the time being performing the functions of governor;

"imprisonment" includes—

(*a*) detention in Saint Patrick's Institution, and

(*b*) detention in a place provided under section 2 of the Prisons Act 1970,

and "sentence of imprisonment" shall be construed accordingly;

"mandatory term of imprisonment" includes, in relation to an offence, a term of imprisonment imposed by a court under an enactment that provides that a person who is guilty of the offence concerned shall be liable to a term of imprisonment of not less than such term as is specified in the enactment;".

—Jim O'Keeffe.

2.

In section 97, after the definition of "probation and welfare officer", to insert the following:

" "probation and welfare service" means those officers of the Minister assigned to perform functions in the part of the Department of State for which the Minister is responsible commonly known by that name.".

—Jim O'Keeffe.

175. In page 25, before section 24, but in Part 4, to insert the following new section:

"Power to suspend sentence.

98.—(1) Where a person is sentenced to a term of imprisonment (other than a mandatory term of imprisonment) by a court in respect of an offence, that court may make an order suspending the execution of the sentence in whole or in part, subject to the person entering into a recognisance to comply with the conditions of, or imposed in relation to, the order.

(2) It shall be a condition of an order under *subsection (1)* that the person in respect of whom the order is made keep the peace and be of good behaviour during—

(*a*) the period of suspension of the sentence concerned, or

(*b*) in the case of an order that suspends the sentence in part only, the period of imprisonment and the period of suspension of the sentence concerned,

and that condition shall be specified in the order concerned.

(3) The court may, when making an order under *subsection (1)*, impose such conditions in relation to the order as the court considers—

(*a*) appropriate having regard to the nature of the offence, and

(*b*) will reduce the likelihood of the person in respect of whom the order is made committing any other offence,

and any condition imposed in accordance with this subsection shall be specified in that order.

(4) In addition to any condition imposed under *subsection (3)*, the court may, when making an order under *subsection (1)* consisting of the suspension in part of a sentence of imprisonment or upon an application under *subsection (6)*, impose any one or more of the following conditions in relation to that order or the order referred to in the said *subsection (6)*, as the case may be:

(*a*) that the person cooperate with the probation and welfare service to the extent specified by the court for the purpose of his or her rehabilitation and the protection of the public,

(*b*) that the person undergo such—

(i) treatment for drug, alcohol or other substance addiction,

(ii) course of education, training or therapy,

(iii) psychological counselling or other treatment,

as may be approved by the court,

(*c*) that the person be subject to the supervision of the probation and welfare service.

(5) A condition (other than a condition imposed, upon an application under *subsection (6)*, after the making of the order concerned) imposed under *subsection (4)* shall be specified in the order concerned.

(6) A probation and welfare officer may, at any time before the expiration of a sentence of a court to which an order under *subsection (1)* consisting of the suspension of a sentence in part applies, apply to the court for the imposition of any of the conditions referred to in *subsection (4)* in relation to the order.

(7) Where a court makes an order under this section, it shall cause a copy of the order to be given to—

(*a*) the Garda Síochána, or

(*b*) in the case of an order consisting of the suspension of a sentence in part only, the governor of the prison to which the person is committed and the Garda Síochána.

(8) Where a court has made an order under *subsection (1)* and imposes conditions under *subsection (4)* upon an application under *subsection (6)*, it shall cause a copy of the order and conditions to be given to—

(*a*) the probation and welfare service, and

(*b*) (i) the Garda Síochána, or

(ii) in the case of an order consisting of the suspension of a sentence in part only, the governor of the prison to which the person is committed and the Garda Síochána.

(9) Where a person to whom an order under *subsection (1)* applies is, during the period of suspension of the sentence concerned, convicted of an offence, the court before which proceedings for the offence were brought shall, after imposing sentence for that offence, remand the person in custody or on bail to the next sitting of the court that made the said order.

(10) A court to which a person has been remanded under *subsection (9)* shall revoke the order under *subsection (1)* unless it considers that the revocation of that order would be unjust in all the circumstances of the case, and where the court revokes that order, the person shall be required to serve the entire of the sentence of imprisonment originally imposed by the court, or such part of the sentence as the court considers just having regard to all of the circumstances of the case, less any period of that sentence already served in prison and any period spent in custody (other than a period during which the person was serving a sentence of imprisonment in respect of an offence referred to in *subsection (9)*) pending the revocation of the said order.

(11) (*a*) A sentence (other than a sentence consisting of imprisonment for life) imposed—

(i) in respect of an offence committed by a person to whom an order under *subsection (1)* applies, and

(ii) during the period of suspension of sentence to which that order applies,

shall not commence until the expiration of any period of imprisonment that the person is required to serve of the sentence referred to in *paragraph (b)* either by virtue of the order under *subsection (1)* or a revocation under *subsection (10)*.

(*b*) This subsection shall not affect the operation of section 5 of the Criminal Justice Act 1951.

(12) Where an order under *subsection (1)* is revoked in accordance with this section, the person to whom the order applied may appeal against the revocation to such court as would have jurisdiction to hear an appeal against any conviction of, or sentence imposed on, a person for an offence by the court that revoked that order.

(13) Where a member of the Garda Síochána or, as the case may be, the governor of the prison to which a person was committed has reasonable grounds for believing that a person to whom an order under this section applies has contravened the condition referred to in *subsection (2)* he or she may apply to the court to fix a date for the hearing of an application for an order revoking the order under *subsection (1)*.

(14) A probation and welfare officer may, if he or she has reasonable grounds for believing that a person to whom an order under *subsection (1)* applies has contravened a condition imposed under *subsection (3)* or *(4)*, apply to the court to fix a date for the hearing of an application for an order revoking the order under *subsection (1)*.

(15) Where the court fixes a date for the hearing of an application referred to in *subsection (13)* or *(14)*, it shall, by notice in writing, so inform the person in respect of whom the application will be made, or where that person is in prison, the governor of the prison, and such notice shall require the person to appear before it, or require the said governor to produce the person before it, on the date so fixed and at such time as is specified in the notice.

(16) If a person who is not in prison fails to appear before the court in accordance with a requirement contained in a notice under *subsection (15)*, the court may issue a warrant for the arrest of the person.

(17) A court shall, where it is satisfied that a person to whom an order under *subsection (1)* applies has contravened a condition of the order, revoke the order unless it considers that in all of the circumstances of the case it would be unjust to so do, and where the court revokes that order, the person shall be required to serve the entire of the sentence originally imposed by the court, or such part of the sentence as the court considers just having regard to all of the circumstances of the case, less any period of that sentence already served in prison and any period spent in custody pending the revocation of the said order.

(18) A notice under *subsection (15)* shall be addressed to the person concerned by name, and may be given to the person in one of the following ways:

(*a*) by delivering it to the person;

(*b*) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;

(*c*) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

(19) This section shall not affect the operation of section 2 (inserted by section 1 of the Criminal Justice (Temporary Release of Prisoners) Act 2003) of the Criminal Justice Act 1960 or Rule 38 of the Rules for the Government of Prisons 1947 (S.R. & O. No. 320 of 1947).

(20) In this section—

"governor" includes, in relation to a prisoner, a person for the time being performing the functions of governor.

"imprisonment" includes—

(*a*) detention in Saint Patrick's Institution, and

(*b*) detention in a place provided under section 2 of the Prisons Act 1970,

and "sentence of imprisonment" shall be construed accordingly;

"mandatory term of imprisonment" includes, in relation to an offence, a term of imprisonment imposed by a court under an enactment that provides that a person who is guilty of the offence concerned shall be liable to a term of imprisonment of not less than such term as is specified in the enactment;

"probation and welfare service" means those officers of the Minister assigned to perform functions in the part of the Department of State for which the Minister is responsible commonly known by that name.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 175

1.

In subsection (7)(*a*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

2.

In subsection (7)(*b*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

3.

In subsection (8)(*b*)(i), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

4.

In subsection (8)(*b*)(ii), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

5.

In subsection (13), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

6.

In section 98(4), after "conditions" to insert ", or such other conditions as the court may deem appropriate,".

—Jim O'Keeffe.

7.

In section 98(6), after "*subsection (4)",* to insert ", or such other conditions as he or she may feel are appropriate,".

—Jim O'Keeffe.

8.

In section 98(7)(*b*), to delete "commited" and substitute "committed,".

—Jim O'Keeffe.

9.

In section 98(8)(*b*)(ii), to delete "commited" and substitute "committed,".

—Jim O'Keeffe.

10.

In section 98(9), to delete "or on bail".

—Jim O'Keeffe.

11.

In section 98(17), to delete "just" and substitute "just,".

—Jim O'Keeffe.

12.

In section 98, to delete subsection (20).

—Jim O'Keeffe.

176. In page 25, before section 24, but in Part 4, to insert the following new section:

"Imposition of fine and deferral of sentence.

99.—(1) Where a person is convicted of an offence and is liable to both a term of imprisonment and a fine in respect of that offence, the court by which he or she was convicted may, subject to *subsection (2)*—

(*a*) impose a fine on that person in respect of the offence, and

(*b*) make an order—

(i) deferring the passing of a sentence of imprisonment for the offence, and

(ii) specifying the term of imprisonment that it would propose to impose on the person in respect of that offence should he or she fail or refuse to comply with the conditions specified in the order.

(2) A court shall not perform functions under *subsection (1)* unless it is satisfied that—

(*a*) the person concerned consents to the sentence of imprisonment being deferred,

(*b*) the person gives an undertaking to comply with any conditions specified in an order made under s*ubsection (1)(b)*, and

(*c*) having regard to the nature of the offence concerned and all of the circumstances of the case, it would be in the interests of justice to so do.

(3) An order under *subsection (1)(b)* shall specify—

(*a*) the date (in this section referred to as the "specified date") on which it proposes to pass sentence should the person contravene a condition of the order, being a date that falls not later than 6 months after the making of the order, and

(*b*) the conditions with which the person concerned is to comply during the period between the making of the order and the specified date, including a condition that the person be of good behaviour and keep the peace.

(4) Where a court makes an order under *subsection (1)(b)*, it shall cause a copy of the order to be given to the person in respect of whom it is made and the Garda Síochána.

(5) A court that has made an order under *subsection (1)(b)* shall not later than one month before the specified date require the person in respect of whom the order was made, by notice, to attend a sitting of the court on that date and at such time as is specified in the notice.

(6) If a person fails to comply with a requirement in a notice under *subsection (5)*, the court may issue a warrant for the arrest of that person.

(7) Where a member of the Garda Síochána has reasonable grounds for believing that a person to whom an order under *subsection (1)(b)* applies has contravened a condition of the order, he or she may apply to the court to fix a date for the hearing of an application for an order imposing the term of imprisonment specified in the order in accordance with *subsection (1)(b)(ii)*.

(8) Where the court fixes a date for the hearing of an application referred to in *subsection (7)*, it shall, by notice in writing, so inform the person in respect of whom the application will be made, and such notice shall require the person to appear before it on the date so fixed and at such time as is specified in the notice.

(9) If a person fails to appear before the court in accordance with a requirement contained in a notice under *subsection (8)*, the court may issue a warrant for the arrest of the person.

(10) Upon an application by a member of the Garda Síochána for an order imposing the term of imprisonment specified in accordance with *paragraph (b)(ii)* of *subsection (1)*, a court may, if it is satisfied that the person in respect of whom the application was made has contravened a condition specified in the order under that subsection, impose the term of imprisonment that it proposed to impose at the time of the making of the order under that subsection (or such lesser term as it considers just in all of the circumstances of the case), unless it considers that it would in all the circumstances be unjust to so do.

(11) On the specified date the court shall, if it is satisfied that the person in respect of whom the order under *subsection (1)* was made has complied with the conditions specified in the order, not impose the sentence that it proposed to impose when making that order and shall discharge the person forthwith.

(12) On the specified date the court may, if it is satisfied that the person in respect of whom the order under *subsection (1)* was made has contravened a condition specified in the order, impose the term of imprisonment that it proposed to impose at the time of the making of the order (or such lesser term as it considers just in all of the circumstances of the case) unless it considers that in all of the circumstances of the case it would be unjust to so do, and where it considers that it would be unjust to impose a term of imprisonment it shall discharge the person forthwith.

(13) A notice under *subsection (5)* or *(8)* shall be addressed to the person concerned by name, and may be given to the person in one of the following ways:

(*a*) by delivering it to the person;

(*b*) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;

(*c*) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 176

1.

In section 99(1)(*b*)(i), to delete "the passing of a sentence of imprisonment for".

—Jim O'Keeffe.

2.

In subsection (4), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

3.

In subsection (7), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

4.

In subsection (10), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

5.

In section 99(10), to delete "Upon an application by" and substitute "Upon the application of".

—Jim O'Keeffe.

6.

In subsection (13), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

177. In page 25, before section 24, but in Part 4, to insert the following new section:

"Restriction on movement order.

100.—(1) Where a person aged 18 years or more is convicted summarily of an offence specified in *Schedule 3** and the court which convicts him or her of the offence considers that it is appropriate to impose a sentence of imprisonment for a term of 3 months or more on the person in respect of the offence, it may, as an alternative to such a sentence, make an order under this section ("a restriction on movement order") in respect of the person.

(2) A restriction on movement order may restrict the offender's movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—

(*a*) requiring the offender to be in such place or places as may be specified for such period or periods in each day or week as may be specified, or

(*b*) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified,

or both, but the court may not, under *paragraph (a)*, require the offender to be in any place or places for a period or periods of more than 12 hours in any one day.

(3) A restriction on movement order may be made for any period of not more than 6 months and, during that period, the offender shall keep the peace and be of good behaviour.

(4) A restriction on movement order may specify such conditions as the court considers necessary for the purposes of ensuring that while the order is in force the offender will keep the peace and be of good behaviour and will not commit any further offences.

(5) A restriction on movement order shall specify the restrictions that are to apply to the offender's movements and, in particular, it shall specify—

(*a*) the period during which it is in force,

(*b*) the period or periods in each day or week during which the offender shall be in any specified place or places,

(*c*) the time at which, or the periods during which, the offender shall not be in any specified place or places or any class or classes of place or places.

(6) In determining for the purposes of *subsection (2)(a)* the period or periods during which the offender shall be in a specified place or places, the court shall have regard to the nature and circumstances of the offence of which the offender has been found guilty and any educational course, training, employment or other activity in which the offender is participating, and it shall ensure, as far as practicable, that that period or those periods do not conflict with the practice by the offender of his or her religion.

(7) In determining for the purpose of *subsection (2)(b)* the place or places, or class or classes of place or places, the time or the periods to be specified in a restriction on movement order, the court shall have regard to the nature and circumstances of the offence of which the offender has been found guilty, the time that the offender committed the offence, the place where the offence was committed and the likelihood of the offender committing another offence in the same or similar place or places or class or classes of place or places.

(8) A court shall not make a restriction on movement order in respect of an offender unless it considers, having regard to the offender and his or her circumstances, that he or she is a suitable person in respect of whom such an order may be made and, for that purpose, the court may request a probation and welfare officer to prepare a report in writing in relation to the offender.

(9) A restriction on movement order which restricts the movements of an offender in accordance with *subsection (2)(a)* shall not be made without the consent of the owner of, or any adult person habitually residing at, the place concerned or, as the case may be, the person in charge of the place or places concerned.

(10) A court making a restriction on movement order may include in the order a requirement that the restrictions on the offender's movements be monitored electronically in accordance with *section 101***, but it shall not include such a requirement unless it considers, having regard to the offender and his or her circumstances, that he or she is a suitable person in respect of whom such a requirement may be made and, for that purpose, the court may request an authorised person to prepare a report in writing in relation to the offender.

(11) Before making a restriction on movement order, the court shall explain to the offender in ordinary language—

(*a*) the effect of the order, including any requirement which is to be included in the order under *section 101***,

(*b*) the consequences which may follow any failure by the offender to comply with the requirements of the order, and

(*c*) that the court has power under *section 102**** to vary the order on the application of any person referred to in that section,

and the court shall not make the order unless the offender agrees to comply with its requirements.

(12) The court shall cause certified copies of a restriction on movement order to be sent to—

(*a*) the offender,

(*b*) the member in charge of the Garda Síochána station for the area where the offender resides or, where appropriate, the area where he or she is to reside while the order is in force,

(*c*) where appropriate, an authorised person who is responsible under *section 101*** for monitoring the offender's compliance with the order.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No.177

1.

In subsection (1), to delete "summarily".

—Joe Costello.

2.

In section 100(2), to delete ", but the court may not, under *paragraph (a)*, require the offender to be in any place or places for a period or periods of more than 12 hours in any one day".

—Jim O'Keeffe.

3.

In subsection (3), to delete "6 months" and substitute "the maximum term of imprisonment for the offence concerned, or 6 months, whichever is greater".

—*Joe Costello.*

4.

In section 100(3), to delete "of not more than 6 months".

—Jim O'Keeffe.

5.

In section 100(6), to delete "is participating, and it shall ensure, as far as practicable," and substitute "ordinarily participates, and it shall ensure, as far as is practicable,".

—Jim O'Keeffe.

6.

In section 100, after subsection (11), to insert the following subsection:

"(12) The court shall, in all circumstances, endeavour to ensure and satisfy itself that, the offender who is to be the subject of an order under *subsection (1)* fully understands the implications of his or her agreeing to comply with the requirement so fthe order under *subsection (11)*.".

—Jim O'Keeffe.

7.

In subsection (12)(*b*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

8.

In section 100(12)(*c*), to delete "order." and substitute the following:

"order, and

(*d*) such other person as the court may deem appropriate.".

—Jim O'Keeffe.

179. In page 25, before section 24, but in Part 4, to insert the following new section:

"Variation of restriction on movement order.

102.—(1) Where a restriction on movement order is in force, the court may, if it so thinks proper, on written application by—

(*a*) the offender,

(*b*) where appropriate, the owner of, or an adult person habitually residing at, the place or places or, as the case may be, the person in charge of the place or places, specified in the order,

(*c*) a member of an Garda Síochána, or

(*d*) where appropriate, an authorised person who is responsible under *section 101** for monitoring the offender's compliance with the order,

vary the order by substituting another period or time or another place for any period, time or place specified in the order.

(2) An application under *subsection (1)* shall be made on notice to such of the other parties specified in *subsection (1)* as is appropriate.

(3) Where any party specified in *subsection (1)* objects to the variation of a restriction on movement order, the court shall not vary the order without hearing from that party.

(4) The court shall cause certified copies of a restriction on movement order varied under this section to be sent to—

(*a*) the offender,

(*b*) where appropriate, the owner of, or an adult person habitually residing at, the place or places or, as the case may be, the person in charge of the place or places, specified in the order,

(*c*) the member in charge of the Garda Síochána station for the area where the offender resides or, where appropriate, the area where he or she is to reside while the order is in force, and

(*d*) where appropriate, an authorised person who is responsible under *section 101** for monitoring the offender's compliance with the order.

(5) The jurisdiction vested in the court under this section shall be exercised by a judge of the District Court for the time being assigned to the district court district in which the offender resides or is to reside while the restriction on movement order is in force.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendment to Amendment No. 179

1.

In section 102(1), before "vary the order" to insert "or counsel for any such party,".

—Jim O'Keeffe.

2.

In subsection (1)(*c*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

3.

In subsection (4)(*c*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

182. In page 25, before section 24, but in Part 4, to insert the following new section:

"Amendment of section 5 of Criminal Justice Act 1951.

105.—Where 2 or more sentences, one of which is a restriction on movement order, are passed on an offender by the District Court and are ordered to run consecutively, the aggregate of the period during which the order in respect of the offender is in force and the period of any term or terms of imprisonment imposed on him or her shall not exceed the maximum period of the aggregate term of imprisonment specified in section 5 of the Criminal Justice Act 1951.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendment to Amendment No. 182

In the inserted section 105, after "1951" to insert ", as amended by sections 11 and 12 of the Act of 1984, section 13 of the Criminal Law Act 1976, and section 8 of the Family Law (Protection of Spouses and Children) Act 1981".

—Jim O'Keeffe.

184. In page 25, before section 24, but in Part 4, to insert the following new section:

"Temporary release of prisoners.

107.—(1) A direction in respect of a person aged 18 years or more may be subject to a condition restricting the person's movements to such extent as the Minister thinks fit and specifies in the direction and those restrictions may be monitored electronically in accordance with *subsection (4)*.

(2) Without prejudice to the generality of *subsection (1)*, a direction may include provision—

(*a*) requiring the person to be in such place or places as may be specified for such period or periods in each day or week as may be specified, or

(*b*) requiring the person not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified,

or both, but the Minister may not, under *paragraph (a)*, require the person to be in any place or places for a period or periods of more than 12 hours in any one day.

(3) A direction shall not be subject to a condition which restricts the movements of a person in accordance with *subsection (2)(a)* without the consent of the owner of, or any adult person habitually residing at, the place or places concerned or, as the case may be, the person in charge of the place or places concerned.

(4) Where the restrictions on a person's movements imposed by a condition in a direction are to be monitored electronically, the direction shall include—

(*a*) a provision making an authorised person responsible for monitoring the person's compliance with the condition and the condition referred to in *paragraph (b)*, and

(*b*) a condition that the person shall, either continuously or for such periods of not more than 6 months as may be specified have an electronic monitoring device attached to his or her person for the purpose of enabling the monitoring of his or her compliance with the condition restricting his or her movements to be carried out.

(5) A condition shall not be imposed under *subsection (1)* or *(4)(b)* unless the person concerned agrees to comply with it, but the absence of such agreement shall not confer an entitlement on that person to be released pursuant to a direction.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 184

1.

In subsection (1) to delete all words form and including "and" where it secondly occurs down to and including "*subsection (4)*".

—Aengus O'Snodaigh.

2.

In section 107(2), after "*paragraph (a),*", to insert "save in exceptional circumstances,".

—Jim O'Keeffe.

3.

To delete subsection (4).

—Aengus O'Snodaigh.

4.

To delete subsection (5).

—Joe Costello, Jim O'Keeffe .

190. In page 25, before section 24, but in Part 4, to insert the following new section:

"Behaviour warnings.

113.—(1) Subject to *subsection (5)*, a member of the Garda Síochána may issue a behaviour warning to a person who has behaved in an anti-social manner.

(2) The behaviour warning may be issued orally or in writing and, if it is issued orally, it shall be recorded in writing as soon as reasonably practicable and a written record of the behaviour warning shall be served on the person personally or by post.

(3) The behaviour warning or, if it is given orally, the written record of it shall—

(*a*) include a statement that the person has behaved in an anti-social manner,

(*b*) demand that the person cease the behaviour or otherwise address the behaviour in the manner specified in the warning, and

(*c*) include notice that—

(i) failure to comply with a demand under *paragraph (b)*, or

(ii) issuance of a subsequent behaviour warning,

may result in an application being made for a civil order.

(4) The member of the Garda Síochána referred to in *subsection (1)* may require the person to give his or her name and address to the member for purposes of the behaviour warning or the written record of it.

(5) A behaviour warning may not be issued more than one month after the time that—

(*a*) the behaviour took place, or

(*b*) in the case of persistent behaviour, the most recent known instance of that behaviour took place.

(6) The person to whom a behaviour warning is issued shall comply with the demands of the warning.

(7) Subject to *subsection (8)*, a behaviour warning remains in force against the person to whom it is issued for 3 months from the date that it is issued.

(8) If an application is made under *section 114** in respect of the person, the behaviour warning remains in force against the person until the application is heard or otherwise determined by the District Court.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 190

1.

In subsection (1), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

2.

In subsection (4), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

3.

In section 113(7), after "issued" to insert ", and no such warning shall remain in

force for a period in excess of 6 months save where a court expressly so orders".

—Jim O'Keeffe.

4.

In section 113(8), after "Court" to insert ", provided such period is not greater than 3 months".

—Jim O'Keeffe.

191. In page 25, before section 24, but in Part 4, to insert the following new section:

"Civil orders.

114.—(1) On application made in accordance with this section, the District Court may make an order (a "civil order") prohibiting the respondent from doing anything specified in the order if the court is satisfied that—

(*a*) the respondent has behaved in an anti-social manner,

(*b*) the order is necessary to prevent the respondent from continuing to behave in that manner, and

(*c*) having regard to the effect or likely effect of that behaviour on other persons, the order is reasonable and proportionate in the circumstances.

(2) The court may impose terms or conditions in the civil order that the court considers appropriate.

(3) An application for a civil order may only be made by a senior member of the Garda Síochána and shall be made—

(*a*) on notice to the respondent, and

(*b*) in the district court district in which the respondent resides at the time.

(4) Before making the application, the senior member of the Garda Síochána must be satisfied that either or both of the following conditions have been met:

(*a*) the respondent has been issued a behaviour warning and has not complied with one or more of the demands of that warning;

(*b*) the respondent has been issued 3 or more behaviour warnings in less than 6 consecutive months.

(5) The respondent in an application under *subsection (1)* may not at any time be charged with, prosecuted or punished for an offence if the act or omission that constitutes the offence is the same behaviour that is the subject of the application and is to be determined by the court under *subsection (1)(a)*.

(6) Unless discharged under *subsection (7)*, a civil order remains in force for no more than the lesser of the following:

(*a*) two years from the date the order is made;

(*b*) the period specified in the order.

(7) The court may vary or discharge a civil order on the application of the person subject to that order or a senior member of the Garda Síochána.

(8) An applicant under *subsection (7)* shall give notice of the application—

(*a*) if the applicant is the person subject to the civil order, to a senior member of the Garda Síochána in the Garda Síochána district in which the applicant resides, or

(*b*) if the applicant is a senior member of the Garda Síochána, to the person who is the subject of the civil order.

(9) The standard of proof in proceedings under this section is that applicable to civil proceedings.

(10) The jurisdiction conferred on the District Court by this section may be exercised as follows:

(*a*) in respect of *subsections (1)* and *(2)*, by a judge of the District Court for the time being assigned to the district court district in which the respondent resides at the time the application is made;

(*b*) in respect of *subsection (7)*, by a judge of the District Court for the time being assigned to the district court district in which the person subject to the civil order resides at the time the application is made.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 191

1.

In section 114(1), to delete "application" and substitute "application,".

—*Jim O'Keeffe.*

2.

In subsection (1), to delete "(a "civil order")" and substitute "(an "anti-social behaviour order")".

—Joe Costello.

3.

In subsection (3), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

4.

In subsection (4), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

5.

In section 114(4), to delete all words from and including "either" down to and including "months" and substitute the following:

"the respondent has been issued a behaviour warning and has not complied with one or more of the demands of that warning"

—Jim O'Keeffe.

6.

In subsection (7), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

7.

In subsection (8)(*a*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

8.

In subsection (8)(*b*), to delete "the Garda Síochána" and substitute "an Garda Síochána".

—Jim O'Keeffe.

192. In page 25, before section 24, but in Part 4, to insert the following new section:

"Appeals against a civil order.

115.—(1) A person against whom a civil order has been made may, within 21 days from the date that the order is made, appeal the making of the order to the Circuit Court.

(2) An appellant under *subsection (1)* shall give notice of the appeal to a senior member of the Garda Síochána in the Garda Síochána district in which the appellant resides.

(3) Notwithstanding the appeal, the civil order shall remain in force unless the court that made the order or the appeal court places a stay on it.

(4) An appeal under this section shall be in the nature of a rehearing of the application under *section 114** and, for this purpose, *subsections (1)**, *(2)** and *(5)** of that section apply in respect of the matter.

(5) If on appeal under this section, the appeal court makes a civil order, the provisions of *section 114 (6)** to *(8)** apply in respect of the matter.

(6) Notwithstanding the appeal period described in *subsection (1)*, the Circuit Court may, on application by the person subject to the civil order, extend the appeal period if satisfied that exceptional circumstances exist which warrant the extension.

(7) The standard of proof in proceedings under this section is that applicable to civil proceedings.

(8) The jurisdiction conferred on the Circuit Court by this section may be exercised as follows:

(*a*) in respect of *section 114 (1)** and *(2)** as those provisions apply to the Circuit Court under *subsection (4)* of this section, by a judge of the Circuit Court for the time being assigned to the circuit in which the appellant under this section resides at the time the appeal is commenced;

(*b*) in respect of *section 114(7)** as it applies to the Circuit Court under *subsection (5)* of this section, by a judge of the Circuit Court for the time being assigned to the circuit in which the person subject to the civil order resides at the time the application is made;

(*c*) in respect of *subsection (6)* of this section, by a judge of the Circuit Court for the time being assigned to the circuit in which the person subject to the civil order resides at the time the application is made.".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 192

1.
In section 115(1), to delete "21" and substitute "28".
—Jim O'Keeffe.

2.
In section 115(1), to delete "from" and substitute "of".
—Jim O'Keeffe.

3.
In subsection (2), to delete "the Garda Síochána" and substitute "an Garda Síochána".
—Jim O'Keeffe.

4.
In section 115, to delete subsection (2).
—Jim O'Keeffe.

5.
In section 115(6), after "person" to insert "who is the".
—Jim O'Keeffe.

205. In page 25, before section 24, but in Part 4, to insert the following new section:

"Substitution of section 52 of Act of 2001.

128.—The following section is substituted for section 52 of the Act of 2001:

"Restriction on criminal proceedings against children.

52.—(1) Subject to subsection (2), a child under 12 years of age shall not be charged with an offence.

(2) Subsection (1) does not apply to a child aged 10 or 11 years who is charged with murder, manslaughter, rape, rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 or aggravated sexual assault.

(3) The rebuttable presumption under any rule of law, namely, that a child who is not less than 7 but under 14 years of age is incapable of committing an offence because the child did not have the capacity to know that the act or omission concerned was wrong, is abolished.

(4) Where a child under 14 years of age is charged with an offence, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.".".
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 205

1.
To delete all words from and including "52" down to and including "abolished" and substitute the following:
"52(1) of the Act of 2001:

"52.—(1) A child under 12 years shall not be charged with an offence and it shall be conclusively presumed that no child under the age of 12 years is capable of committing an offence.

(2) Where a child under 14 years of age is charged with an offence, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions and the DPP shall have a duty to uphold the best interests of the child.".".

—Aengus O'Snodaigh.

2.

In section 128, after the inserted section 52(3), to insert the following subsection:

"(4) Notwithstanding subsection (3) of this section, the provisions of section 52 of the Children Act 2001 shall apply.".

—Jim O'Keeffe.

215. In page 25, before section 24, but in Part 4, to insert the following new section:

"Substitution of section 149 of Act of 2001.

138.—The following section is substituted for section 149 of the Act of 2001:

"Period of detention in children detention school.

149.—(1) Where a child is found guilty of an offence in the Children Court, any term of detention in a children detention school imposed for the offence shall not be for a period longer than the term of detention or imprisonment which the court could impose on an adult who commits such an offence.

(2) When considering the appropriate period for which a child found guilty of an offence should be detained, a court shall have regard to the child's educational needs.".".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 215

1.

In the inserted section 149, subsection (2), after "needs" to insert "and wellbeing".

—Aengus O'Snodaigh.

2.

In the inserted section 149(2), after "needs" to insert ", progress and best interests".

—Jim O'Keeffe.

216. In page 25, before section 24, but in Part 4, to insert the following new section:

"Amendment of section 155 of Act of 2001.

139.—Section 155 of the Act of 2001 is amended—

(*a*) by the substitution of the following subsections for subsections (1) to (3):

"(1) Where—

(*a*) a child is convicted on indictment of an offence and sentenced to detention in a children detention school,

(*b*) the period of detention is served initially in such a school,

(*c*) the child has attained the age of 18 years before the period of detention has expired,

the person shall be transferred to a place of detention provided under section 2 of the Act of 1970 or a prison to serve the remainder of the period of detention.

(2) If, on attaining the age of 18 years, the person—

(*a*) is engaged in a particular course of education or in training which is not available in such a place of detention or in a prison, or

(*b*) is nearing the end of his or her period of detention in the school,

the person may continue to be detained in the school beyond that age for a period not exceeding 6 months.

(3) Notwithstanding any provision in any enactment, no child shall be transferred from a children detention school to a place of detention provided under section 2 of the Act of 1970 or a prison.",

(*b*) by the deletion of subsections (4) and (5), and

(*c*) in subsection (6), by the deletion of "in a children detention centre,".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendment to Amendment No. 216

In section 139, in the inserted subsection (2), to delete "6" and substitute "12".

—Jim O'Keeffe.

220. In page 25, before section 24, but in Part 4, to insert the following new section:

"Substitution of section 159 of Act of 2001.

143.—The following section is substituted for section 159 of the Act of 2001:

"Certified schools under Act of 1908.

159.—(1) Subject to subsection (2), a certified reformatory school or industrial school under Part IV of the Act of 1908 shall, with the agreement of the Minister and the Minister for Education and Science, become a children detention school on the commencement of this section in relation to it.

(2) A certified industrial school under that Part shall, with the agreement of the Minister for Education and Science and the Minister for Health and Children and on the commencement of this section in relation to it, become premises provided and maintained by the Health Service Executive under section 38(2) of the Act of 1991 for the provision of residential care for children in care.

(3) On the commencement of this section in relation to a certified reformatory school or industrial school the functions relating to which stood vested in the Minister for Education and Science (other than the function of providing education and training and related programmes for children detained in it) such schools immediately before the commencement shall—

(*a*) if the school becomes a children detention school, be vested in the Minister, or

(*b*) in the case referred to in subsection (2), be vested in the Health Service Executive.

(4) The lawfulness of the detention, and the period of detention, of a child who is detained in a certified reformatory or industrial school is not affected by the commencement of this section in relation to it.

(5) Any reference in any enactment to a reformatory school or an industrial school shall, on the commencement of this section in relation to it, be construed as a reference to a children detention school or, as the case may be, premises provided and maintained by the Health Service Executive under section 38(2) of the Act of 1991.".".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 220

1.

In the inserted section 159, subsection (3)(*a*), after "Minister" to insert "for Health and Children".

—Aengus O'Snodaigh.

2.

In the inserted section 159, subsection (3)(*b*), to delete "Health Service Executive" and substitute "Minister for Health and Children".

—Aengus O'Snodaigh.

3.

In the inserted section 159(1), after "Science" to insert "and the Minister for Health and Children".

—Jim O'Keeffe.

4.

In the inserted section 159(3), to delete "industrial school" and substitute "industrial school,".

—Jim O'Keeffe.

5.

In the inserted section 159(3), to delete "in it) such schools" and substitute "in it), such functions".

—Jim O'Keeffe.

224. In page 25, before section 24, but in Part 4, to insert the following new section:

"Substitution of section 185 of Act of 2001.

147.—The following section is substituted for section 185 of the Act of 2001:

"Inspection of children detention schools.

185.—(1) The Minister shall cause each children detention school to be inspected.

(2) An inspection shall be conducted by a person authorised in that behalf by the Minister.

(3) The person so authorised shall have expertise in relation to the inspection of children's residential accommodation."."

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendment to Amendment No. 224

In the inserted section 185(3), after "expertise" to insert "and experience".

—Jim O'Keeffe.

230. In page 25, before section 24, but in Part 4, to insert the following new section:

"Amendment of section 230 of Act of 2001.

153.—Section 230 of the Act of 2001 is amended—

(*a*) in subsection (1), by the substitution of "11" for "12", and

(*b*) by the substitution of the following subsection for subsection (3):

"(3) The members of the Board shall include—

(*a*) three persons nominated by the Minister for Justice, Equality and Law Reform,

(*b*) three persons, two of whom shall be representatives of the Health Service Executive,

(*c*) three experts in child care, and

(*d*) three persons with relevant experience in dealing with issues of educational disadvantage or exclusion, nominated by the Minister for Education and Science.".".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 230

1.

In section 153, to delete all words from and including "amended—" down to and including "subsection (3):" and substitute "amended by the substitution of the following subsection for subsection (3):".

—Jim O'Keeffe.

2.

In the inserted section 230(3), to insert after paragraph (*a*), "(*b*) the Ombudsman for Children,".

—Jim O'Keeffe.

236. In page 25, before section 24, but in Part 4, to insert the following new section:

"New section 257E in Act of 2001.

159.—The following section is inserted in the Act of 2001 after section 257D:

"Appeal against behaviour order.

257E.—(1) A child against whom a behaviour order has been made may, within 21 days from the date that the order is made, appeal the making of the order to the Circuit Court.

(2) An appellant under subsection (1) shall give notice of the appeal to the superintendent in charge of the Garda Síochána district in which the appellant resides.

(3) Notwithstanding the appeal, the behaviour order shall remain in force unless the court that made the order or the appeal court places a stay on it.

(4) An appeal under this section shall be in the nature of a rehearing of the application under section 257D and, for this purpose, subsections (1), (3) and (4) of that section apply in respect of the matter.

(5) If on appeal under this section, the appeal court makes a behaviour order, the provisions of section 257D(6) to (8) apply in respect of the matter.

(6) Notwithstanding the appeal period described in subsection (1), the Circuit Court may, on application by the child subject to the behaviour order or the child's parent or guardian, extend the appeal period if satisfied that exceptional circumstances exist which warrant the extension.

(7) The standard of proof in proceedings by this section is that applicable to civil proceedings.

(8) The jurisdiction conferred on the Circuit Court under this section may be exercised as follows:

(*a*) in respect of section 257D(1), (3) and (4) as those provisions apply to the Circuit Court under subsection (4) of this section, by a judge of the Circuit Court for the time being assigned to the circuit in which the appellant under this section resides at the time the appeal is commenced;

(*b*) in respect of section 257D(7) as it applies to the Circuit Court under subsection (5) of this section, by a judge of the Circuit Court for the time being assigned to the circuit in which the child subject to the behaviour order resides at the time the application is made;

(*c*) in respect of subsection (6) of this section, by a judge of the Circuit Court for the time being assigned to the circuit in which the child subject to the behaviour order resides at the time the application is made.".".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendments to Amendment No. 236

1.

In the inserted section 257E(1), to delete "21" and substitute "28".

—Jim O'Keeffe.

2.

In the inserted section 257E, to delete subsection (2).

—Jim O'Keeffe.

SECTION 29

258. In page 31, before section 29, to insert the following new section:

"Possession of article intended for use in connection with certain offences.

29.—(1) It is an offence for a person, without lawful authority or reasonable excuse to possess or control any article with the intention of using it in the course of or in connection with the commission of—

(*a*) an offence under section 15 of the Non-Fatal Offences against the Person Act 1997, or

(*b*) the common law offence of kidnapping to which section 2 of, and paragraph 4 of the Schedule to, the Criminal Law (Jurisdiction) Act 1976 applies.

(2) In a prosecution for an offence under *subsection (1)* the court (or the jury as the case may be) may, without more—

(*a*) having regard to all the circumstances (including the type of article alleged to have been intended for use in the course of or connection with the commission of an offence under this section), and

(*b*) where it considers it reasonable to do so,

regard possession of the article as sufficient evidence of intent for the purposes of *subsection (1)*.

(3) Where a person is charged with an offence referred to in *subsection (1)*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

(4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

(5) In this section—

"article" includes a substance, document or any thing;

"document" includes—

(*a*) a map, plan, graph, drawing, photograph or record, or

(*b*) a reproduction in permanent legible form, by a computer or other means (including enlarging), of information in non-legible form."

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendment to Amendment No. 258

In section 29(2), to delete ", without more".

—Jim O'Keeffe.

SECTION 30

269. In page 34, before section 30, to insert the following new section:

"Amendment of section 19 of Criminal Justice (Public Order) Act 1994.

30.—Section 19 of the Criminal Justice (Public Order) Act 1994 is amended—

(*a*) by the substitution of the following subsection for subsection (1):

"(1) Any person who assaults or threatens to assault—

(*a*) a person providing medical services at or in a hospital, or

(*b*) a person assisting such a person, or

(*c*) a peace officer acting in the execution of a peace officer's duty, knowing that he or she is, or being reckless as to whether he or she is, a peace officer so acting, or

(*d*) any other person acting in aid of a peace officer, or

(*e*) any other person with intent to resist or prevent the lawful apprehension or detention of himself or herself or any other person for any offence,

shall be guilty of an offence.",

(*b*) in subsection (2), by the substitution of "€3,000" for "£1,000",

(*c*) by the substitution of the following subsection for subsection (3):

"(3) Any person who resists or wilfully obstructs or impedes—

(*a*) a person providing medical services at or in a hospital, knowing that he or she is, or being reckless as to whether he or she is, a person providing medical services, or

(*b*) a person assisting such a person, or

(*c*) a peace officer acting in the execution of a peace officer's duty, knowing that he or she is or being reckless as to whether he or she is, a peace officer so acting, or

(*d*) a person assisting a peace officer in the execution of his or her duty,

shall be guilty of an offence.",

(*d*) in subsection (4), by the substitution of "€1,500" for "£500", and

(*e*) in subsection (6)—

(i) by the insertion of the following definitions:

"hospital" includes the lands, buildings and premises connected with and used wholly or mainly for the purposes of a hospital;

"medical services" means services provided by—

(*a*) doctors, dentists, psychiatrists, psychologists, nurses, midwives, pharmacists, paramedics (including members of the ambulance service) or other persons in the provision of treatment and care for persons at or in a hospital, or

(*b*) persons acting under direction of those persons;

and

(ii) in the definition of "peace officer", by the insertion of ", a member of the fire brigade;" after "a prison officer".".

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[*Acceptance of this amendment involves the deletion of section 30 of the Bill.*]

Amendments to Amendment No. 269

1.

In paragraph (*b*), to delete " "€3,000" " and substitute " "€5,000" ".

—Joe Costello.

2.

In paragraph (*b*), after " "£1,000" " to insert "and by the substitution of "7 years" for "5 years" ".

—Joe Costello.

3.

In paragraph (*d*), to delete " "€1,500" " and substitute " "€2,500" ".

—Joe Costello.

4.

In section 30, to delete paragraph (*b*) and subtitute the following:

"(*b*) by the insertion of the following new subsection:

"(2) Any person who assaults or threatens to assault—

(*a*) a person providing emergency medical services in any place, or

(*b*) a person assisting such a person,

shall be guilty of an offence.",

(*c*) in subsection (2)—

(i) by the substitution of "under this section" for "*subsection (1)*", and

(ii) by the substitution of "€3000" for "£1000",".

—Jim O'Keeffe.

5.

In section 30, to delete paragraph (*d*) and substitute "(*d*) by the deletion of subsection (4),".

—Jim O'Keeffe.

289. In page 37, after line 14, to insert the following new Schedule:

"*Section 68*.*

SCHEDULE 2

INCREASE IN CERTAIN PENALTIES UNDER EXPLOSIVES ACT 1875

Section of Act	Subject matter	Words deleted	Words substituted
(1)	(2)	(3)	(4)
4	Making explosives in unauthorised place	to a penalty not exceeding one hundred pounds a day for every day during which he so manufactures	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
5	Keeping explosives	to a penalty not exceeding two shillings for every pound of gunpowder so kept	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
9	Regulation of explosives factories and magazines	to a penalty not exceeding in the case of the first offence fifty pounds, and in the case of a second or any subsequent offence one hundred pounds, and in addition fifty pounds for every day during which such breach continues	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
10	General rules for factories and magazines	to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
11	Special rules for regulation of workmen in factories or magazines	forty shillings	€100
13	Devolution and determination of licence	twenty shillings	€50

17	General rules for stores	to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
19	Special rules for regulation of workmen in stores	forty shillings	€100
22	General rules for registered premises	to a penalty not exceeding two shillings for every pound of gunpowder in respect of which, or being on the premises in which, the offence was committed	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
30	Restriction on sale of explosives in highways, etc.	to a penalty not exceeding forty shillings	, on summary conviction, to a fine not exceeding €2,500 or, on conviction on indictment, to a fine not exceeding €5,000
31	Sale of explosives to children	thirteen years	18 years
		to a penalty not exceeding five pounds	, on summary conviction, to a fine not exceeding €2,500 or, on conviction on indictment, to a fine not exceeding €5,000
32	Explosives to be sold in closed packages labelled	to a penalty not exceeding forty shillings	, on summary conviction, to a fine not exceeding €2,500 or, on conviction on indictment, to a fine not exceeding €5,000
33	General rules as to packing of explosives for conveyance	to a penalty not exceeding twenty pounds	on summary conviction, a fine not exceeding €2,500 or, on conviction on indictment, a fine not exceeding €5,000
34	Bye-laws by harbour authority	pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues	on summary conviction, a fine not exceeding €5,000 or, on conviction on indictment, a fine not exceeding €10,000

35	Bye-laws by railway and canal company	pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues	on summary conviction, a fine not exceeding €5,000 or, on conviction on indictment, a fine not exceeding €10,000
36	Bye-laws as to wharves in which explosives loaded or unloaded	pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues	on summary conviction, a fine not exceeding €5,000 or, on conviction on indictment, a fine not exceeding €10,000
37	Byelaws as to conveyance by road or otherwise	pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues	on summary conviction, a fine not exceeding €5,000 or, on conviction on indictment, a fine not exceeding €10,000
40	Application of Part I to explosives other than gunpowder	to a penalty not exceeding one hundred pounds, and to a further penalty not exceeding two shillings for every pound of such explosive	on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
43	Manufacture, etc. of specially dangerous explosives	to a penalty not exceeding ten shillings for every pound of such explosive brought in the ship	on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
		to a penalty not exceeding ten shillings for every pound of such explosive delivered or sold or found in his possession.	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
55	Powers of Government inspectors	liable to a penalty not exceeding one hundred pounds for each offence	guilty of an offence and liable, on summary conviction, to a fine not exceeding €1,000.
56	Notice to remedy dangerous practices, etc.	to a penalty not exceeding twenty pounds for every day during which he so fails to comply	, on summary conviction, to a fine not exceeding €1,000.

63	Notice of accidents	to a penalty not exceeding twenty pounds	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
66	Inquiry into accidents	shall for every such offence incur a penalty not exceeding ten pounds and in the case of a failure to comply with a requisition for making any return or producing any document, not exceeding ten pounds during every day that such failure continues	is guilty of an offence and liable on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
69	Duty and power of local authority	to a penalty not exceeding twenty pounds	, on summary conviction, to a fine not exceeding €1,000.
73	Search for explosives	to a penalty not exceeding fifty pounds	, on summary conviction, to a fine not exceeding €1,000.
74	Seizure and detention of explosives	to a penalty not exceeding fifty pounds	, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €10,000
77	Penalty on and removal of trespassers	to a penalty not exceeding five pounds	, on summary conviction, to a fine not exceeding €3,000 or, on conviction on indictment, to a fine not exceeding €5,000
79	Imprisonment for wilful act or neglect endangering life or limb	of the case, to imprisonment, with or without hard labour, for a period not exceeding six months	"of the case—
			(a) on summary conviction, to imprisonment for a term not exceeding 12 months or both the pecuniary penalty and such imprisonment, or
			(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or both the pecuniary penalty and such imprisonment".

81	Forgery and falsification of documents	to imprisonment, with or without hard labour, for a term not exceeding two years”	on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both or, on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding five years or both.
82	Defacing notices	two pounds	€100

”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Amendment to Amendment No. 289

In row (27), column (4), to delete “is” and substitute “shall be”.

—Jim O’Keeffe.