



DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL 2004 CRIMINAL JUSTICE BILL 2004

LEASUITHE COISTE COMMITTEE AMENDMENTS

[First additional list of amendments to the composite list of amendments
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DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL 2004 —ROGHCHOISTE

CRIMINAL JUSTICE BILL 2004 —SELECT COMMITTEE

Leasuithe Breise *Additional Amendments*

SECTION 24

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

“PART 7

ORGANISED CRIME

Interpretation (*Part 7**).

69.—(1) In this Part—

“act” includes omission and a reference to the commission or doing of an act includes a reference to the making of an omission;

“criminal organisation” means a structured group, however organised, that—

- (a) is composed of 3 or more persons acting in concert,
- (b) is established over a period of time,
- (c) has as its main purpose or main activity the commission or facilitation of one or more serious offences in order to obtain, directly or indirectly, a financial or other material benefit;

“Irish ship” has the meaning it has in section 9 of the Mercantile Marine Act 1955;

“serious offence” means an offence for which a person may be punished by imprisonment for a term of 4 years or more;

“structured group” means a group that—

- (a) is not randomly formed for the immediate commission of a single offence, and
- (b) does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

(2) For the purposes of this section facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.”

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

[SECTION 24]

Amendments to Amendment No. 146

1.

In section 69, to delete subsection (2).

—Aengus O’Snodaigh.

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

“Organised crime.

71.—(1) A person who, for the purpose of enhancing the ability of a criminal organisation to commit or facilitate—

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

knowingly, by act—

- (i) in a case to which *paragraph (a)* applies, whether done in or outside the State, and
- (ii) in a case to which *paragraph (b)* applies, done in the State, on board an Irish ship or on an aircraft registered in the State,

participates in or contributes to any activity of the 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—

- (a) the criminal organisation concerned actually committed a serious offence in the State or a serious offence under the law of a place outside the State where the act constituting the offence would, if done in the State, constitute a serious offence, as the case may be,
- (b) the participation or contribution of the person concerned actually enhanced the ability of the criminal organisation concerned to commit or facilitate the offence concerned, or
- (c) the person concerned knew the specific nature of any offence that may have been committed or facilitated by the criminal organisation concerned.

(3) In determining whether a person participates in or contributes to any activity of a criminal organisation, the court may consider, *inter alia*, whether the person—

- (a) uses a name, word, symbol or other representation that identifies, or is associated with, the organisation, or
- (b) receives any benefit from the organisation.

(4) For the purposes of this section, facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.

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(5) 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 5 years or both.”.

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

Amendments to Amendment No. 148

1.

In section 71, to delete subsection (2).

—Aengus O’Snodaigh.

2.

In section 71, to delete subsection (4).

—Aengus O’Snodaigh.

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 (2).

—Aengus O’Snodaigh.

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

“Drug trafficking offences for purposes of this Part.

87.—In this Part “drug trafficking offence” has the meaning it has in section 3(1) (as amended by *section 85**) of the Criminal Justice Act 1994 but does not include such an offence unless the person convicted of it has, in respect thereof, been sentenced to imprisonment for a period of more than one year.”.

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

Amendments to Amendment No. 164

1.

In section 87, after “87.—” to insert the following:

“(1) Any Ministerial regulations arising from this Part shall require the approval of both Houses of the Oireachtas.

[SECTION 24]

(2)".

—Aengus O’Snodaigh.

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.

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(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,

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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 do so, 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.

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(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 section 98, after “98.—” to insert the following:

“Any Ministerial regulations arising from this Part shall require the approval of both Houses of the Oireachtas.”.

—Aengus O’Snoaigh.

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

“PART 11*

CIVIL PROCEEDINGS IN RELATION TO ANTI-SOCIAL BEHAVIOUR

Interpretation and application of this Part.

112.—(1) In this Part—

“behaviour warning” has the meaning assigned to it under *section 113**;

“civil order” means an order described in *section 114 (1)**;

“senior member of the Garda Síochána” means a member of the Garda Síochána not below the rank of a superintendent.

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(2) For the purposes of this Part, a person behaves in an anti-social manner if the person causes or, in the circumstances, is likely to cause, to one or more persons who are not of the same household as the person—

- (a) harassment,
- (b) significant or persistent alarm, distress, fear or intimidation, or
- (c) significant or persistent impairment of their use or enjoyment of their property.

(3) This Part does not apply—

- (a) in respect of behaviour of a person who is under the age of 18 years at the time the behaviour takes place,
- (b) to any behaviour of a person that takes place before this section comes into force, or
- (c) to any act or omission of a person in respect of which criminal proceedings have been instituted against that person.”

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

Amendments to Amendment No. 189

1.

In section 112, after “superintendent.” to insert the following subsection:

“(2) Any Ministerial regulations or guidelines arising from this Part shall require the approval of both Houses of the Oireachtas.”

—Aengus O’Snodaigh.

2.

In section 112, after “superintendent.” to insert the following subsection:
the court may—

“(2)(a) The Minister shall, in consultation with the Garda Síochána, the Judiciary, the Irish Human Rights Commission and relevant sectoral NGOs, draw up guidelines concerning all aspects of the operation of this Part,

(b) Without prejudice to the generality of (a) the guidelines shall include:

- (i) that an application for an order under this Part shall not be made unless all appropriate alternative mechanisms for dealing with the behaviour have been considered and used or considered inappropriate for use;
- (ii) the Court considers it is the only satisfactory mechanism for dealing with the behaviour; and
- (iii) limitations on the discretion of Judges in deciding the content of an order to ensure that every order respects the constitutional and human rights of the subjects of the order and any interference with those rights is proportionate and justified in the circumstances of the particular case,

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- (c) The guidelines shall also identify the special circumstances where anti-social behaviour may have sufficiently serious consequences to justify the use of an application for an order in accordance with the provisions of this Part,
- (d) These guidelines shall require the approval of both Houses of the Oireachtas.”.

—Aengus O’Snodaigh.

3.

In section 112, after “superintendent.” to insert the following subsection:

“(2) The Minister shall designate an independent body for the purpose of monitoring Garda practice in relation to this Part to ensure, in particular, that these orders are not used to circumvent the procedural requirements of the ordinary criminal law and this body shall report to the Oireachtas on an annual basis.”.

—Aengus O’Snodaigh.

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)*.

[SECTION 24]

(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, after subsection (8), to insert the following subsection:

“(9)(a) Where an application is made under this section there shall be a hearing by the Court and an order shall not be made, varied or discharged unless an opportunity has been given to the respondent to be heard and to cross examine any witness who has given information on oath in support of the application.

- (b) The Judge, on hearing evidence from the respondent for the purpose of determining whether any behaviour by the respondent constituted anti-social behaviour, shall disregard any act by the respondent which she or he considers to be reasonable in all the circumstances.”.

—Aengus O’Snodaigh.

2.

In subsection (9), to delete “civil” and substitute “criminal”.

—Aengus O’Snodaigh.

[SECTION 24]

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(7), to delete “civil” and substitute “criminal”.

—Aengus O’Snodaigh.