



AN BILLE UM CHEARTAS COIRIÚIL 2004
CRIMINAL JUSTICE BILL 2004

EXPLANATORY MEMORANDUM

Introduction

The Bill proposes a number of amendments to the criminal law, particularly in the area of criminal investigations, which will enhance Garda powers in tackling crime and will generally improve the efficiency and the effectiveness of the criminal justice system. The Bill takes into account the recommendations of the Expert Group appointed to consider changes in the criminal law as recommended in the report of the Steering Group on the efficiency and effectiveness of the Garda Síochána.

PART 1

PRELIMINARY AND GENERAL

Section 1 (Short title and commencement) — This is a standard provision giving the short title and stating that the Bill, when enacted, will come into operation by Ministerial order or orders either generally or with reference to a particular purpose or provision and on such day or days as the Minister appoints.

Section 2 (Interpretation) — This is a standard provision which defines certain words and terms used in the Bill.

Section 3 (Expenses) — This is a standard provision on the payment of expenses incurred in the administration of the Bill out of moneys provided by the Oireachtas.

PART 2

INVESTIGATION OF OFFENCES

Section 4 (Designation of place as crime scene) — This section provides for a statutory basis for the designation of a place as a crime scene.

Subsection (1) provides that a member of the Garda Síochána when in a public place, or any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be may pending the giving of a direction under subsection (3), take such steps as considered reasonably necessary to preserve any evidence of, or relating to the commission of an arrestable offence. The steps which may be taken are specified in subsection (4) of the section. The member must have reasonable grounds for believing that an arrestable offence was, is being, or may have been committed in the place or that there is, or

may be, evidence relating to, the commission of an arrestable offence that was, or may have been committed elsewhere. An “arrestable offence” has the meaning it has in section 2 of the Criminal Law Act 1997 i.e. an offence for which a person of full capacity and not previously convicted may be punished by imprisonment for a term of five years or by a more severe penalty and includes an attempt to commit any such offence.

Subsection (2) provides that a member who exercises such powers shall, as soon as reasonably practicable, seek the making of a direction under subsection (3) by a member of the Garda Síochána not below the rank of superintendent in relation to the place.

Subsection (3) provides that a direction may be given by a member of the Garda Síochána not below the rank of superintendent designating a place as a crime scene. The member who makes the direction must have reasonable grounds for believing that either an arrestable offence was, is being, or may have been committed in the place, or there is, or may be, evidence in the place of the commission of an arrestable offence that was, or may have been, committed elsewhere, and it is necessary to designate the place as a crime scene to preserve, search for and collect evidence of, or relating to, the commission of the offence. Subsection (4) provides that a direction shall authorise such members of the Garda Síochána as considered appropriate to take such steps as considered reasonably necessary, including all or any of those listed in the subsection, to preserve, search for and collect evidence at the crime scene. Subsection (5) provides that a member of the Garda Síochána not below the rank of superintendent can authorise such persons as he or she considers appropriate to enter a crime scene for a specified purpose and for such period as he or she may determine. Subsection (6) provides that a direction shall be in force no longer than is reasonably necessary to preserve, search for and collect evidence.

Subsection (7) provides that a direction in relation to a place other than a public place shall cease to be in force 24 hours after it is given. Subsection (8) sets out the requirements in relation to the recording of the giving of the direction. Subsection (9) provides that a judge of the District Court may, in specified circumstances, including that the investigation is being conducted diligently and expeditiously, continue the direction in force for a period not exceeding 48 hours. Subsection (10) provides that an order continuing the direction in force may be made not more than 3 times. Subsection (11) provides that the High Court may, in particular where exceptional circumstances exist which warrant the continuance of the direction, make an order continuing a direction in force for such period as it considers appropriate. Subsection (12) provides that a member of the Garda Síochána who intends to make an application to a judge of the District Court or of the High Court for an order continuing a direction in force shall, if it is reasonably practicable to do so before the application is made, give notice of it to the occupier of the place or if it is not reasonably practicable to ascertain the identity or whereabouts of the occupier or the place is unoccupied, the owner, unless it is not reasonably practicable to ascertain the identity or whereabouts of the owner. Subsection (13) provides that if the occupier or owner of the place applies to be heard by the Court an order shall not be made under subsection (9) or (11) unless an opportunity has been given to the person to be heard.

Subsection (14) provides that the High Court or a judge of the District Court may attach such conditions as the Court or the judge considers appropriate to an order for the purpose of protecting the interests of the occupier or owner.

Subsection (15) provides that a person who obstructs a member of the Garda Síochána in the exercise of his or her powers under the section or who fails to comply with a direction under the section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both. Subsection (16) provides that a member of the Garda Síochána may arrest without warrant any person whom the member suspects of committing an offence under subsection (15).

Subsection (17) provides that nothing in this section prevents the designation of a place as a crime scene, or a member of the Garda Síochána from taking any of the steps referred to in subsection (4), if the owner or occupier of the place consents.

Subsection (18) provides for certain definitions for the purpose of the section.

Section 5 (*Search warrants in relation to arrestable offences*) — Subsection (1) of section 5 amends the Criminal Justice (Miscellaneous Provisions) Act by the substitution of a new section 10.

The proposed section 10 provides as follows.

Subsection (1) provides that where a judge of the District Court is satisfied by information on oath of a member not below the rank of sergeant that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an arrestable offence is to be found in any place, the judge may issue a warrant for the search of that place and any persons found at that place.

Subsection (2) provides that a member not below the rank of superintendent may, in certain circumstances, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an arrestable offence is to be found in any place, issue a warrant for the search of that place and any persons found at that place. Subsection (3) provides that a member not below the rank of superintendent shall not issue a search warrant under subsection (2) unless he or she is satisfied that the warrant is necessary for the proper investigation of the offence concerned and that circumstances of urgency giving rise to the need for the immediate issue of the warrant would render it impracticable to apply to a judge of the District Court for the issue of a search warrant.

Subsection (4) provides that subject to subsection (5), a search warrant under the section shall be expressed, and shall operate, to authorise a named member, accompanied by such other members or persons or both as the member thinks necessary to enter, at any time or times within one week of the date of issue of the warrant, on production if so requested of the warrant, and if necessary by the use of reasonable force, the place named in the warrant, to search it and any persons found at that place, and to seize anything found at that place, or anything found in the possession of a person present at that place at the time of the search, that that member reasonably believes to be evidence of, or relating to, the commission of an arrestable offence.

Subsection (5) provides that a search warrant issued under the section by a superintendent shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

Subsection (6) provides that a member acting under the authority of a search warrant under the section may require any person present at the place where the search is being carried out to give to the

member his or her name and address, and may arrest without warrant any person who obstructs or attempts to obstruct the member in the carrying out of his or her duties, fails to give the member his or her name and address or gives a name or address which the member has reasonable cause for believing is false or misleading.

Subsection (7) provides that a person who obstructs or attempts to obstruct a member acting under the authority of a search warrant under this section, who fails to comply with a requirement under subsection (6)(a) or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

Subsection (8) provides that the power to issue a warrant under the proposed section 10 is without prejudice to any other power conferred by statute to issue a warrant for the search of any place or person.

Subsection (9) defines terms used in the section.

Subsection (2) of section 5 provides that the proposed section 10 shall not affect the validity of a warrant issued under section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 before the commencement of the section and such a warrant shall continue in force in accordance with its terms after the commencement.

Section 6 (*Power to seize and retain evidence*) — Subsection (1) provides that where a Garda, who is in a public place or any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be, finds or comes into possession of anything and he or she has reasonable grounds for believing that it is evidence of, or relating to, the commission of an arrestable offence, he or she may seize and retain it for use as evidence in any criminal proceedings for such period from the date of seizure as is reasonable or, if proceedings are commenced in which it is required for use in evidence, until the conclusion of the proceedings. The provisions of the Police (Property) Act 1897 apply to the item so seized. Subsection (2) provides that the member shall not seize or retain a document where it is represented or appears that the document was, or may have been, made for the purpose of obtaining, giving or communicating legal advice unless he or she suspects with reasonable cause that the document was not made for that purpose. Subsection (3) provides that the power under the section to seize and retain evidence is without prejudice to any other power conferred by statute or otherwise to seize or retain evidence of, or relating to, the commission or attempted commission of an offence.

Section 7 (*Arrestable offences*) — Section 2(1) of the Criminal Law Act 1997 provides that an “arrestable” means an offence for which a person of full capacity and not previously convicted may, under or by virtue of any enactment, be punished by imprisonment for a term of five years or by a more severe penalty and includes an attempt to commit any such offence. This section amends section 2(1) by the substitution of “under or by virtue of any enactment or the common law” for “under or by virtue of any enactment”. In effect the amendment will bring offences punishable under common with a term of imprisonment of five years or more where there is no statutory penalty provided for within the definition of “arrestable offences”.

Section 8 (*Amendment of section 4 of Act of 1984*) — The main purpose of this section is to amend section 4 of the Criminal Justice Act 1984 to provide for increased power of detention under the Act. Section 4 of the Act provides for a total of up to 12 hours detention (made up of an initial period of 6 hours with provision for a further period of up to 6 hours) where the offence involved carries a penalty of five years imprisonment or more. This section amends in paragraph (c) section 4 to provide for the possibility of a further period of 12 hours detention on the approval of an officer of at least the level of chief superintendent, who must have reasonable grounds for believing that the increased detention is necessary for the proper investigation of the offence concerned. The section also amends in paragraph (a) section 4 of the 1984 Act so as to apply that section to offences punishable under common law with a term of imprisonment of five years or more where there is no statutory penalty provided for. This provision mirrors the provision in section 7. For clarification purposes the section also makes a number of amendments to section 4 in paragraph (b) to make it clear that the detention provisions of the section apply to a person arrested within a Garda station as well as to a person taken to a Garda station.

Section 9 (*Amendment of Criminal Justice (Drug Trafficking) Act 1996*) — This section makes a number of technical amendments to sections 2 and 4 of the Criminal Justice (Drug Trafficking) Act 1996. The amendments makes it clear that the detention provisions apply to a person arrested within a Garda station as well as to a person taken to a station.

Section 10 (*Amendment of section 42 of Criminal Justice Act 1999*) — Section 42 of the Criminal Justice Act 1999 provides that a prisoner may be arrested by a member of the Garda Síochána on the authority of a judge of the District Court in connection with an offence other than the offence for which he or she was imprisoned and brought to a Garda Station and detained there for the period authorised by section 4 of the Criminal Justice Act 1984. This section makes a technical amendment so as to apply it in circumstances where there may be more than one offence or suspected offence involved.

Section 11 (*Power of Garda Síochána to photograph arrested persons*) — This section provides in subsections (1) and (2) that, on the authority of a member of the Garda Síochána not below the rank of sergeant, a person arrested by a member of the Garda Síochána may be photographed in a Garda Síochána station as soon as may be after his or her arrest. A photograph taken in these circumstances may only be used to assist in the identification of the arrested person in connection with any proceedings which may be instituted against him or her in respect of the offence for which he or she was arrested. Subsection 3 provides that the provisions of section 8 of the 1984 Act which provide for the destruction of records shall apply to photographs (including the negatives) taken under this section. Subsection (4) provides that a person who refuses to allow him or herself to be photographed pursuant to this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

Section 12 (*Amendment of Act of 1984*) — Section 12 amends sections 6, 8 and 28 of the Criminal Justice Act 1984. Subsection 12(a) increases the fine contained in section 6(4) of the 1984 Act to €3,000 in respect of a detained person who obstructs or attempts to obstruct or otherwise fails to co-operate with a Garda exercising powers under that section. The powers which a member of the Garda Síochána may use under section 6 include the power to demand the

name and address of the person, the power to search or cause the person to be searched and the power to take or cause to be taken fingerprints and palm prints. Subsection 12(b) increases the period for which photographs, palmprints and fingerprints can be retained by the Gardaí in the absence of proceedings before they must be destroyed. Where proceedings for an offence to which section 4 applies are not instituted against the person then the period within which the destruction of the record must be carried out is increased from six months to twelve months. The period for which a judge of the District Court may, on the application of the Director of Public Prosecutions, authorise the preservation of a record as provided for in section 4(7) is increased from six months to twelve months. Subsection (c) increases the fine in respect of a person dealt with under the Probation of Offenders Act 1907 or who is convicted and who refuses to comply with a requirement under section 28 of the 1984 Act or to allow his or her fingerprints, palmprints or photograph to be taken pursuant to that section. The subsection increases the fine to €3,000.

Section 13 (*Amendment of Criminal Justice (Forensic Evidence) Act 1990*) — This section makes a number of amendments to the Criminal Justice (Forensic Evidence) Act 1990. The effect of subsections (a)(i),(ii) and (iii) is to provide that mouth swabs and saliva become samples which may be taken without the consent required by section 2(4)(b) of the Criminal Justice (Forensic Evidence) Act 1990. Subsection 8(A) to be inserted by subsection (a)(v) clarifies that where a sample of hair, other than pubic hair, is taken in accordance with the section, the sample may be taken either by cutting hairs or by plucking hairs singly with their roots and where hairs are plucked, no more can be plucked than the person taking the sample reasonably considers to be necessary to constitute a sufficient sample for the purpose of forensic testing. Subsection (a)(iv) is a technical amendment clarifying that subsection (5) applies to a drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994. Subsection (vi) increases the maximum fine from £1,000 to €3,000 where a person obstructs or attempt to obstruct any member of the Garda Síochána or any other person acting under the powers conferred by subsection (1). Subsection (b) extends the time period from 6 to 12 months for which samples obtained from persons can be retained before being destroyed in circumstances where proceedings are not instituted. Subsection (c) is intended to enhance the safeguards applicable to the taking of samples. It provides for an amendment to section 5(2) to provide that the Minister for Justice, Equality and Law Reform may make regulations for the manner in which samples may be taken, the location and physical conditions in which samples may be taken, and the persons (including members of the Garda Síochána), and the number of such persons, who may be present when samples are taken.

PART 3

ADMISSIBILITY OF CERTAIN WITNESS STATEMENTS

Part 3 deals with the admissibility of previous witness statements. The rule (common law) in Irish Courts is that a previous statement made to Gardaí cannot be admitted in evidence as proof of any fact contained in it. The fact that a witness may have previously said something different can be used to attack the credibility of the witness but the assertions in the earlier statement cannot constitute proof of those assertions. Aspects of the rule have been changed by statute. Part 3 constitutes a further change to this rule, based on principles applied by the Canadian Supreme Court to the admission of prior inconsistent statements by witnesses.

Section 14 (*Definitions (Part 3)*) — defines a number of terms used in the Part.

Section 15 (*Admissibility of certain witness statements*) — This section sets out the circumstances in which such statements can be admitted. Subsection (1) provides that where a person is sent forward for trial in relation to an arrestable offence, a relevant statement made by the witness may be admitted as evidence of any fact contained in it if the witness is available for cross-examination but refuses to give evidence, denies making the statement or gives evidence which is inconsistent with it. Subsection (2) lists the conditions which a court may take into account in deciding on its admissibility. These are, confirmation by the witness or proof that he or she made it, satisfaction by the court that direct oral evidence of the facts in the statement would have been admissible in court as evidence, that it is voluntary, reliable, and that it was given on oath or affirmation or contains a statutory declaration by the witness as to its truth or the court is satisfied the person understood the requirement to tell the truth. Subsection (3) provides that in deciding on the reliability of the statement the court should have regard to whether it was video-recorded or given on oath or solemn affirmation or, whether there is in the absence of the foregoing, other sufficient evidence of reliability. The court must also have regard to any explanation given by the witness for refusing to give the statement, for giving evidence inconsistent with it, or for any evidence given in relation to denial of making the statement. Subsection (4) provides that the statement will not be admitted if the Court is of the opinion that in all the circumstances, including whether its admission or exclusion would be unfair to the accused, it is not in the interests of justice to do so or if its admission is unnecessary having regard to other evidence. Subsection (5) provides that in estimating the weight to be given to the statement regard must be had to all the circumstances from which any inference could be drawn as to its accuracy or otherwise. Subsection (6) clarifies that the section is without prejudice to certain existing statutory procedural requirements regarding matters such as proof of statements.

Section 16 (*Witness statements made to members of Garda Síochána*) — This section provides that in relation to an arrestable offence where a witness makes a statement to a member of the Garda Síochána, the witness may make a statutory declaration that the statement is true and a Garda may take and receive it. Alternatively the Garda may administer an oath or affirmation.

Section 17 (*Other witness statements*) — This section provides in subsection (2) that a witness may make a statutory declaration that his or her statement is true to a competent person. Subsection (1) defines competent person as a person employed by a public authority and subsection (2) defines public authority.

Section 18 (*Regulations concerning certain witness statements which are recorded*) — This section provides that the Minister may make regulations for the video-recording or audio-recording of witness statements made to the Garda Síochána.

Section 19 (*Amendment of section 4E of Act of 1967*) — This section amends Section 4E (application by accused for dismissal of charge) of the Criminal Procedure Act 1967 to allow for the admissibility of any video-recording or audio-recording, which may be admitted by the trial court as evidence of any fact stated in it.

PART 4

APPEALS IN CERTAIN CRIMINAL PROCEEDINGS

Part 4 of the Bill deals with appeals in certain criminal proceedings. While there are broad defence rights of appeal in Irish law there exists only a very limited prosecution right of appeal. This has its basis in the historical common law rule against double jeopardy i.e. that no-one should be tried twice for the same offence. The existing prosecution right of appeal in relation to cases tried on indictment is contained in section 34 of the Criminal Procedure Act, 1967. It provides for a prosecution right of appeal on a point of law arising from a judge directed acquittal. This right of appeal is *without prejudice* i.e. it cannot interfere with the decision to acquit the accused. Accordingly the consequences of the appeal are strictly limited to the point of law at issue in the direction.

Section 20 (*Reference of question of law to Supreme Court*) — this section amends section 34 of the Criminal Procedure Act 1967 to provide that the Attorney General or the Director of Public Prosecutions, if he or she is the prosecuting authority in the trial, may on a *without prejudice* basis, refer a question of law arising during the trial to the Supreme Court for determination. Subsection (3) provides that the Supreme Court can hear argument by the Attorney General or the Director of Public Prosecutions as appropriate or by counsel on their behalf, by counsel on behalf of the acquitted person or by that person if the court agrees. The Court can also hear argument by counsel appointed by the Court, if in accordance with the provisions of subsection (4) the acquitted person waives his or her rights in this respect or if the Court considers it desirable in the public interest to appoint such counsel. Subsection (5) provides that the identity of the acquitted person should not be disclosed unless that person agrees otherwise. Subsections (6) to (9) provide for free legal aid for the acquitted person if he or she opts to be represented and if the person's means are insufficient to obtain legal aid.

Section 21 (*Decision of Court of Criminal Appeal final save on certificate of Court, Attorney General or Director of Public Prosecutions*) — This section restates and amends Section 29 of the Courts of Justice Act 1924 which provides for an appeal to the Supreme Court from the Court of Criminal Appeal where the Court or the Attorney General certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the appeal be taken. The Supreme Court found in *The People (AG) v Kennedy* that a prosecution appeal did not lie under this section. The amendment is similar to section 20 in that it provides a without prejudice right of appeal to the prosecution to the Supreme Court in relation to a point of law involved in a decision by the Court of Criminal Appeal. In accordance with subsection (3) the court or the Attorney General or the Director of Public Prosecutions as appropriate, must certify that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the Attorney General or the Director should take the appeal. The arrangements in relation to appeals under subsection (3) for representation, anonymity and for legal aid are similar to those in section 20 and are provided for in subsections (4) to (10).

Section 22 (*Amendment of section 2(2) of Criminal Justice Act 1993*) — Section 2(2) of the Criminal Justice Act 1993 sets a limit of 28 days for the making of an application by the Director of Public Prosecutions for the review of an unduly lenient sentence. The

amendment gives the Court the discretion to extend this period to up to 56 days.

Section 23 (*Appeal against order for costs*) — This section provides that where a person is acquitted of an offence tried on indictment the Attorney General or the Director of Public Prosecutions as appropriate may appeal an order for the costs against him or her.

PART 5

MISCELLANEOUS

Section 24 (*Restriction of section 10(4) of Petty Sessions (Ireland) Act 1851*) — This section amends the Criminal Justice Act 1951 by the substitution of a new section 7. Section 7 of the Criminal Justice Act 1951 provides that the time limits prescribed by section 10(4) of the Petty Sessions (Ireland) Act 1851 for the making of complaints in cases of summary jurisdiction (currently six months) do not apply to an indictable offence. The proposed amendment will further clarify that the restriction will not apply to a scheduled offence under the 1951 Act and will provide that it will not apply to an offence that is triable either on indictment and, subject to certain conditions including the consent of the prosecution, summarily. The effect of this amendment is that the 6 month time limit for prosecuting offences will apply only to offences that can only be tried as summary offences. The section also provides that the amendment shall not have effect in relation to an offence committed before the commencement of this section.

Section 25 (*Amendment of Courts of Justice Act 1924*) — Section 79 of the Courts of Justice Act 1924 provides for three bases of jurisdiction for the District Court i.e. where the crime is committed, where the accused is arrested or where the accused resides. In exceptional cases it can happen that these conditions may not apply and so difficulties may arise with court jurisdiction. This section provides a new section 79A to provide for these exceptional cases. Subsection (1) provides that where, in respect of a crime committed in the State the accused does not reside in the State, he or she was not arrested for and charged with the crime in the State, and either the crime was committed in more than one district court district, or it is known that it was committed in one of not more than five district court districts, but the particular district concerned is not known, then, for the purposes of section 79 of the Act, the crime is to be deemed to have been committed in each of the districts concerned and a judge assigned to any of the districts concerned may deal with the case.

Subsection (2) provides that where the accused does not reside in the State and he or she was not arrested for and charged with the crime in the State and the district court district in which the crime was committed is not known, then, for the purposes of section 79 of the Act, the crime is to be deemed to have been committed in the Dublin Metropolitan District.

Subsection (3) provides that a case will not fall within the section unless it is shown that, reasonable efforts have been made to ascertain the whereabouts of the accused for the purposes of arresting him or her for, and charging him or her with the crime, concerned.

Subsection (4) provides that where a judge for the time being assigned to a district court district exercises jurisdiction in a criminal case by virtue of the section, the judge or any other judge assigned to the district will have jurisdiction in the case until its conclusion in

the District Court notwithstanding that it is later established that, but for this subsection, he or she would not have jurisdiction in the case.

Subsection (5) provides that a judge for the time being assigned to a district court district who exercises jurisdiction in a criminal case by virtue of the section may deal with the case in any court area within his or her district.

Section 26 (*Amendment of Courts (Supplemental Provisions) Act 1961*) — This section amends the Courts (Supplemental Provisions) Act 1961 with regard to the exercise of jurisdiction by the Circuit Court judges. The amendments mirror those contained in section 25 with regard to the exercise of jurisdiction by judges of the District Court.

Section 27 (*Anonymity of certain witnesses*) — This section makes provision for anonymity for witnesses with a medical condition. Subsection (1) provides that in any criminal proceedings where it is proposed to call a person to give evidence, and the person has a medical condition, an application can be made for an order prohibiting the publication of anything related to the proceedings which would identify the person as a person having that condition. Subsection (2) provides that the application for the order can be made at any stage of the proceedings. Subsection (3) provides that the judge may make the order if satisfied the person concerned has a medical condition, and his or her identification as a person with that condition would be likely to cause undue distress to him or her, and that the order would not be prejudicial to the interests of justice.

Subsection (4) provides for an appeal to the High Court against a refusal or grant of an order.

Subsections (5) and (6) provide for applications to vary or revoke the order.

Subsection (7) provides that applications or an appeal under the section must be made on notice and in chambers.

Subsection (8) provides that it is an offence to publish or broadcast anything in contravention of an order under the section, punishable by a fine of €13,000 or imprisonment for up to 3 years or both.

Subsection (9) provides a defence that the person was not aware nor suspected that the publication or broadcast could identify the person as having the medical condition.

Subsection (10) provides in paragraph (a) that where an offence under subsection (8) has been committed by a body corporate with the consent or connivance of or attributable to any neglect on the part of any person who is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. Subsection (10)(b) provides where the affairs of a body corporate are managed by its members, the provisions of paragraph (a) apply in relation to the acts and defaults of a member in connection with the functions of management as if he or she were a director or manager of the body corporate. Subsection (11) defines terms used in the section.

Section 28 (*Information concerning property held in trust*) — this section deals with Information concerning property held in trust.

Subsection (1) provides that in relation to an investigation into whether a person has committed an arrestable offence, a member of the Garda Síochána not below the rank of superintendent may apply to a judge of the High Court for an order for the disclosure of information regarding any trust in which the person may have an interest or with which the person may be otherwise connected. Subsection (2) provides that the Judge may order the disclosure of the information if he or she is satisfied that there are reasonable grounds for suspecting that a person has committed an arrestable offence and has some interest in or other connection with the trust, that information regarding the trust is required for the purposes of such an investigation, and that there are reasonable grounds for believing that it is in the public interest that the information should be disclosed.

Subsection (3) provides that an order under the section cannot interfere with legal privilege but can have effect notwithstanding other restrictions on disclosure imposed by statute or otherwise.

Subsection (4) provides that the High Court can vary or revoke an order under the section. Subsection (5) creates an offence of failing to comply with an order or giving false or misleading information which is punishable on summary conviction by a fine not exceeding €3000, or up to 12 months imprisonment or both. On indictment the penalties are an unlimited fine or imprisonment for up to 5 years or both.

Subsection (6) provides that information disclosed by a person is not admissible in evidence in any criminal proceedings against the person or his or her spouse, except in any proceedings for an offence under *subsection (5)(b)*. Subsection (7) provides definitions of terms used in the section.

Section 29 (*Amendment of Criminal Justice (Public Order) Act 1994*) — This section provides a fixed penalty procedure in relation to lesser public order offences as an alternative to proceedings being taken in the first instance. In this respect section 29 inserts two new sections, sections 23A and 23B into the Criminal Justice (Public Order) Act 1994.

Section 23 (A) provides in subsection (1) that a member of the Garda Síochána who has reasonable grounds for believing that a person (who is not less than 18 years old) is committing, or has committed, an offence under section 5 of the Criminal Justice (Public Order) Act 1994 (disorderly conduct in a public place) may serve on the person personally or by post a fixed charge notice. Subsection (2) provides that for this purpose a member of the Garda Síochána may, request the person to give his or her name and address and to verify the information given, and if he or she is not satisfied with the name and address or any verification given, request that the person accompany the member to a Garda Síochána station for the purpose of confirming the person's name and address. Subsection (3) provides that a person who does not comply with a request by a member under subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,500. Under subsection (4) a person who is committing, or has committed, an offence under subsection (3) may be arrested without a warrant. Subsection (5) states that the notice is to be in the prescribed form and should state specified factors including

- when and where the fixed charge offence was alleged to have been committed and,
- a prosecution for it will not be instituted if within 28 days the

person pays the prescribed amount (or within a further 28 days an amount which is 50 per cent greater than the prescribed amount) to a member of the Garda Síochána at a specified Garda Síochána station or to another specified person at a specified place the prescribed amount, and that in default of such payment the person will be prosecuted for the offence.

Subsection (9) provides that the Minister can make regulations prescribing anything referred to as prescribed i.e. the form for fixed charge notice and the fixed charge amounts

Section 23 (B) applies the fixed charge procedure to an offence under section 4 of the Criminal Justice (Public Order) Act 1994 (Intoxication in a public place) where a Garda Síochána has reasonable cause to suspect that a person of not less than 18 years of age is committing an offence under section 4. Subsection (2) provides that where such a person is arrested and brought to a Garda Síochána station, the member may, instead of releasing the person on bail, release him or her unconditionally after serving, or causing to be served, on him or her a fixed charge notice as specified in section 23A(5).

Subsection (3) provides that where a person is not arrested, the member of the Garda Síochána may serve, or cause to be served, on the person personally or by post a notice in the prescribed form.

Subsection (4) provides that on the service of a notice referred to in subsection (2) or (3) the offence under section 4 is thereupon deemed to be a fixed charge offence, and subsections (5) to (10) of section 23A apply and have effect accordingly in relation to it.

Section 30 (*Amendment of section 4 of the Firearms Act 1925*) — Section 4 of the Firearms Act 1925 provides for the conditions to be met before the granting of a firearm certificate. The proposed amendment provides for a further condition (paragraph *d*) to the effect that in the case of an application for a firearms certificate made to a superintendent of the Garda Síochána, the person has provided, to the superintendent's satisfaction, secure accommodation for the firearm concerned at the address where it is to be kept. For the purposes of subsection (1)(*d*) the superintendent or a member of the Garda Síochána acting on his or her behalf may inspect the accommodation referred to in that subsection or require the applicant to provide proof of its existence. If the superintendent or the Minister (as the case may require) is not satisfied as to the matters specified in subsection (1)(*d*), he or she shall refuse to issue a firearms certificate to the applicant and shall inform the applicant of the refusal and the reason for it.

Section 31 (*Amendment of section 48 of the Children Act 2001*) — This section amends section 48 of the Children Act 2001 to the effect that in criminal proceedings where a person has been convicted of an offence subsequent to and offence in respect of which he or she was admitted to the Diversion Programme under the Act, the prosecution would be entitled to inform the court of the fact of the admission to the Programme at the time of sentence.

Section 32 (*Amendment of section 30A (3) of Offences against the State Act 1939*) — Section 30A(3) of the Offences Against the State Act 1939 is amended by the substitution of “for the purpose of charging him or her with that offence forthwith or bringing him or her before a Special Criminal Court as soon as practicable so that he or she may be charged with that offence before that Court” for “for the purpose of charging him with that offence forthwith”. The effect

of this provision is that the requirement to charge the person before the Special Criminal Court is “as soon as practicable” whereas it remains “forthwith” for other courts. The amendment is required because the requirement of “forthwith” may suggest an immediacy which may not be possible to meet in relation to sittings of the Special Criminal Court.

Section 33 (*Amendment of section 5 of Criminal Evidence Act 1992*) — This section is a technical provision which amends section 5 of the Criminal Evidence Act 1992 to specify that documentary evidence of the receipt, handling transmission and storage of anything by the Forensic Science Laboratory can be admitted in court.

Section 34 (*Amendment of section 14 of Criminal Assets Bureau Act 1996*), **Section 35** (*Amendment of section 5 of Prevention of Corruption (Amendment) Act 2001*) and **Section 36** (*Amendment of Criminal Justice (Theft and Fraud Offences) Act 2001*) are technical amendments which will require that a judge in granting a search warrant or order to produce evidential material, to be satisfied in relation to the need for the warrant by ‘information on oath’ as opposed to “hearing evidence on oath” This amendment will bring these provisions into line with the proposed wording of the search provision in section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 as amended by section 5 of this Bill and with the language used in other statutory search provisions.

Section 37 (*Amendment of section 25 of Petty Sessions (Ireland) Act 1851*) — This section amends section 25 of the Petty Sessions (Ireland) Act 1851 to provide that all warrants (except as otherwise provided by law) in criminal proceedings issued by the District Court are to be addressed to the superintendent or an inspector of the Garda Síochána of the Garda Síochána district within which the courthouse in which the warrant is issued is situated or the person named in the warrant resides. The effect of this provision will be to speed up the execution of warrants by ensuring that it issues to the most appropriate Garda District for execution.

Section 38 (*Execution of certain warrants*) — This section is to allow for changes to the administrative procedures in relation to the execution of a warrant. The section provides that a warrant for the arrest of a person or an order of committal of a person may, notwithstanding section 26 of the Petty Sessions (Ireland) Act 1851, be executed by a member of the Garda Síochána in any part of the State.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Iúil, 2004.*