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**AN BILLE UM CHEARTAS COIRIÚIL 2007**  
**CRIMINAL JUSTICE BILL 2007**

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*Mar a tionscnaíodh*  
*As initiated*

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Criminal Justice Act 2006	2006, No. 26
Criminal Law (Jurisdiction) Act 1976	1976, No. 14
Criminal Law Act 1997	1997, No. 14
Criminal Procedure Act 1967	1967, No. 12
European Parliament Elections Act 1997	1997, No. 2
Explosive Substances Act 1883	46 & 47 Vic., c. 3
Explosives Act 1875	38 & 39 Vic., c. 17
Firearms (Firearm Certificates for Non-Residents) Act 2000	2000, No. 20
Firearms Act 1925	1925, No. 17
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Illegal Immigrants (Trafficking) Act 2000	2000, No. 29
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Protection of Employees (Part-Time Work) Act 2001	2001, No. 45
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AN BILLE UM CHEARTAS COIRIÚIL 2007  
CRIMINAL JUSTICE BILL 2007

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# BILL

*entitled*

5 AN ACT TO AMEND CERTAIN ENACTMENTS, INCLUDING  
THE BAIL ACT 1997, THE CRIMINAL JUSTICE ACT 1984,  
THE OFFENCES AGAINST THE STATE (AMENDMENT)  
ACT 1998, THE MISUSE OF DRUGS ACT 1977, THE FIRE-  
10 ARMS ACTS 1925 TO 2006, THE GARDA SÍOCHÁNA ACT  
2005, THE CRIMINAL JUSTICE ACT 2006 AND THE SEA-  
FISHERIES ACTS 2003 AND 2006, TO AMEND THE LAW  
IN RELATION TO SENTENCING IN CERTAIN  
RESPECTS, AND TO PROVIDE FOR RELATED  
MATTERS.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Criminal Justice Act 2007.

Short title,  
collective citations,  
construction and  
commencement.

(2) This Act (other than *Part 8*) comes into operation on such day  
20 or days as the Minister may appoint by order or orders either gener-  
ally or with reference to any particular purpose or provision, and  
different days may be so appointed for different purposes or differ-  
ent provisions.

(3) The Bail Act 1997 and *Part 2* may be cited together as the  
25 Bail Acts 1997 and 2007.

(4) The Misuse of Drugs Acts 1977 to 2006 and *Part 5* may be  
cited together as the Misuse of Drugs Acts 1977 to 2007 and shall be  
construed together as one.

(5) The Firearms Acts 1925 to 2006 and *Part 6* may be cited  
30 together as the Firearms Acts 1925 to 2007 and shall be construed  
together as one.

(6) The Garda Síochána Act 2005 and *Part 7* may be cited  
together as the Garda Síochána Acts 2005 to 2007.

(7) The Sea-Fisheries Acts 2003 and 2006 and *Part 8* may be cited together as the Sea-Fisheries Acts 2003 to 2007.

Definitions.

2.—In this Act—

“Act of 1925” means Firearms Act 1925;

“Act of 1964” means Firearms Act 1964; 5

“Act of 1967” means Criminal Procedure Act 1967;

“Act of 1984” means Criminal Justice Act 1984;

“Act of 1990” means Firearms and Offensive Weapons Act 1990;

“Act of 1997” means Bail Act 1997;

“Act of 2005” means Garda Síochána Act 2005; 10

“Act of 2006” means Criminal Justice Act 2006;

“explosive” means an explosive within the meaning of the Explosives Act 1875 and any other substance or thing that is an explosive substance within the meaning of the Explosive Substances Act 1883;

“firearm” has the meaning it has in section 1 of the Act of 1925; 15

“Minister” means Minister for Justice, Equality and Law Reform.

Repeals.

3.—(1) Subject to *subsection (2)*, the enactments specified in *Schedule 1* are repealed to the extent specified in *column 3* of that Schedule.

(2) The repeal by *subsection (1)* of the enactments specified in *Schedule 1* does not affect the application of those enactments to a failure to mention a fact to which those enactments relate if the failure occurred before the repeal comes into operation, and those enactments apply to such a failure as if they had not been repealed. 20

Expenses.

4.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 25

## PART 2

### AMENDMENT OF ENACTMENTS RELATING TO BAIL

Amendment of section 1 of Act of 1997.

5.—Section 1 of the Act of 1997 is amended in subsection (1) by the insertion of the following definitions: 30

“ ‘authorised person’ means a person who is appointed in writing by the Minister, or a person who is one of a prescribed class of persons, to be an authorised person for the purposes of sections 6B and 6C; 35

‘Minister’ means Minister for Justice, Equality and Law Reform;

‘prescribed’ means prescribed by regulations made by the Minister;”.

6.—The Act of 1997 is amended by the insertion of the following section after section 1:

Statement by applicants for bail charged with serious offences.

5 “1A.—(1) A person who is charged with a serious offence and applies for bail (in this section referred to as ‘the applicant’) shall, subject to subsections (4) and (5)(c), furnish to the prosecutor a written statement duly signed by the applicant and containing the following information relating to the applicant:

(a) his or her name and any other name or names previously used;

10 (b) his or her current occupation and any previous occupation or occupations within the immediately preceding 3 years;

(c) his or her source or sources of income within the immediately preceding 3 years;

15 (d) his or her property, whether wholly or partially owned by, or under the control of, the applicant and whether within or outside the State;

20 (e) any previous conviction or convictions of the applicant for the serious offence with which he or she is charged;

(f) any offence or offences committed by the applicant while previously on bail;

25 (g) any previous application or applications by the person for bail, indicating whether or not it was granted and, if granted, the conditions to which the recognisance was subject.

(2) The statement shall be in the prescribed form or a form to the like effect.

(3) The statement shall be furnished to the prosecutor—

30 (a) where written notice of the application for bail is not required, as soon as reasonably practicable before the application is made, or

(b) where such notice is required, on service of the notice.

35 (4) The requirement in subsection (1) to furnish a statement may be dispensed with where—

(a) the prosecutor states an intention to consent to the grant of bail, or

(b) the applicant and prosecutor consent to dispensing with the requirement.

40 (5) The court may by order:

(a) extend the period for production by the applicant of the statement;

(b) adjourn the hearing of the application pending production of the statement;

(c) dispense with the need to comply with subsection (1) if satisfied that there is good and sufficient reason for doing so;

(d) impose such conditions as it considers just in any order made by it under this section. 5

(6) The statement shall be received in evidence without further proof in proceedings under this section if it purports to be signed by the applicant.

(7) In proceedings under this section any witness may, with the leave of the court, be examined on the content of the statement. 10

(8) No information relating to the statement or any part of it shall be published in a written publication available to the public or be broadcast, unless the court otherwise directs.

(9) The court may, if it considers that publication of any examination of the applicant in relation to the statement or any part of it or of any submissions made to the court may prejudice the applicant's right to a fair trial, by order direct that no information relating to the examination or submissions be published in a written publication available to the public or be broadcast. 15 20

(10) The court, when making an order under subsection (9), may specify the duration of the order and may at any time vary or set aside the order.

(11) An applicant who knowingly gives false or misleading information or conceals any material fact, either in the statement or in evidence in proceedings under this section, is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 25

(12) Any information contained in the statement is not admissible in evidence in any other proceedings or matter, except in proceedings against the applicant under subsection (11). 30

(13) The court may consider an application for bail, notwithstanding a failure by the applicant to furnish the statement. 35

(14) Nothing in this section limits the jurisdiction of a court to grant bail.

(15) Subsection (2) of section 4 applies in relation to the hearing of evidence in relation to the statement and subsections (4) to (7) of that section apply in relation to a contravention of subsection (8) or (9) of this section, in each case with the necessary modifications. 40

(16) In this section 'property' means—

(a) cash, money in an account in a financial institution, cheques, bank drafts and transferable securities (including shares, warrants and debentures), 45

(b) land,

(c) mechanically propelled vehicles, and

(d) any other asset exceeding €3,000 in value.”.

7.—The Act of 1997 is amended by the insertion of the following section after section 2:

Evidence in applications for bail under section 2.

5 “2A.—(1) Where a member of the Garda Síochána not below the rank of chief superintendent, in giving evidence in proceedings under section 2, states that he or she believes that refusal of the application is reasonably considered necessary to prevent the commission of a serious offence by that person, the statement is evidence that refusal of the application is reasonably considered necessary for that purpose.

(2) Evidence given by such a member in the proceedings is not admissible in any criminal proceedings against the applicant.

15 (3) The court may, if it considers that publication of evidence given by such a member under subsection (1) or of any part of it may prejudice the accused person’s right to a fair trial, by order direct that no information relating to the evidence or that part, or to any examination of the member, be published in a written publication or be broadcast.

20 (4) The court, when making an order under subsection (3), may specify the duration of the order and may at any time vary or set aside the order as it sees fit and subject to such conditions as it may impose.

25 (5) Subsection (2) of section 4 applies in relation to the hearing of the evidence of the member and subsections (4) to (7) of that section apply in relation to a contravention of subsection (3) of this section, in each case with the necessary modifications.

(6) Nothing in this section is to be construed as prejudicing the admission in proceedings under section 2 of other evidence of belief or of evidence of opinion.

30 (7) Nothing in this section limits the jurisdiction of a court to grant bail.”.

8.—Section 5 of the Act of 1997 is amended—

Amendment of section 5 of Act of 1997.

35 (a) in subsection (1), by the substitution of “any moneys to be paid into court under a recognisance” for “any recognisance”,

(b) in subsection (2), by the substitution of the following paragraph for paragraph (a):

40 “(a) Where a court requires payment of moneys into court by a person or any surety as a condition of a recognisance, it may accept as security, in lieu of such payment, any instrument that it considers to be adequate evidence of the title of a person to property (other than land or any estate, right or interest in or over land).”,

45 and

(c) in subsection (3), by the substitution of “moneys paid” for “recognisance paid”.

Amendment of section 6 of Act of 1997.

**9.—Section 6 of the Act of 1997 is amended—**

(a) in subsection (1), by the substitution of the following paragraph for paragraph (a):

“(a) the recognisance shall, in addition to the condition requiring his or her appearance before the court at the end of the period of remand of the accused person, be subject to the condition that the accused person shall not commit an offence while on bail,”,

and

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

“(3A) A recognisance referred to in subsection (3) shall contain a statement that the accused person may apply to the court at any time to vary or revoke a condition of the recognisance.”.

Application of section 6 in relation to certain appellants.

**10.—The Act of 1997 is amended by the insertion of the following section after section 6:**

“6A.—Section 6 applies in relation to recognisances entered into by persons appealing against sentences of imprisonment imposed by the District Court with the following modifications:

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

“(a) the recognisance shall be subject to the following conditions, namely, that the appellant shall—

(i) prosecute the appeal,

(ii) attend the sittings of the Circuit Court until the appeal has been determined, and

(iii) not commit an offence while on bail;”

(b) references in that section to an accused person or a person charged with an offence are to be construed as references to persons so appealing;

(c) the reference to a court in subsection (8) is to be construed as a reference to the District Court;

and with any other necessary modifications.”.

Electronic monitoring of certain persons admitted to bail.

**11.—The Act of 1997 is amended by the insertion of the following section after section 6A:**

“6B.—(1) Subject to subsection (2), where a person (in this section referred to as ‘the person’) who—

(a) is charged with a serious offence or is appealing against a sentence of imprisonment imposed by the District Court, and

5 (b) is admitted to bail on entering into a recognisance which is subject to any of the conditions mentioned in subparagraphs (i) and (iv) of section 6(1)(b),

the court may make the recognisance subject to the following further conditions:

10 (i) that the person's movements while on bail are monitored electronically so that his or her compliance or non-compliance with a condition mentioned in any of the said subparagraphs can be established;

15 (ii) that for that purpose the person has an electronic monitoring device attached to his or her person, either continuously or for such periods as may be specified; and

20 (iii) that an authorised person is responsible for monitoring the person's compliance or non-compliance with any condition mentioned in the said subparagraphs or in paragraph (ii) of this subsection.

(2) A recognisance shall not be made subject to the further conditions mentioned in subsection (1)—

25 (a) if the person is to reside or remain in a particular place, without the consent of the owner of the place or of an adult person habitually residing there, or, as the case may be, of the person in charge of the place, and

(b) unless the person agrees to comply with those further conditions.

30 (3) The court shall direct that a copy of the recognisance containing the conditions to which it is subject be given to—

(a) the person and any surety,

35 (b) the member in charge of the Garda Síochána station for the place where the person is residing while the recognisance is in force, and

(c) if an authorised person is to be responsible for monitoring the person's movements electronically, the authorised person.

40 (4) The court, on application to it by a person whose recognisance is subject to one or more of the conditions or further conditions referred to in subsection (1), may, if it considers it appropriate to do so, vary a condition of the recognisance, whether by altering or revoking it or by adding a further condition to it.

45 (5) A recognisance referred to in subsection (3) shall contain a statement that the accused person may apply to the court at any time to vary or revoke a condition of the recognisance.

(6) The prosecutor shall be given notice of, and be entitled to be heard in, any proceedings under subsection (4).

(7) Without prejudice to section 6(5), the court may issue a warrant for the arrest of the person on information being made in writing and on oath by an authorised person, any surety or a member of the Garda Síochána that he or she is about to contravene any of the further conditions referred to in paragraph (i) or (ii) of subsection (1). 5

(8) Subsections (6) to (9) of section 6 apply, with the necessary modifications, in relation to a warrant issued under subsection (7) of this section as if the warrant had been issued under subsection (5) of that section. 10

(9) This section does not apply in relation to a person under the age of 18 years.”.

Evidence of  
electronic  
monitoring.

**12.**—The Act of 1997 is amended by the insertion of the following section after section 6B:

“6C.—(1) Where the movements of a person are subject to electronic monitoring as a condition of the recognisance entered into by the person, evidence of his or her— 15

(a) presence or absence in or from a particular district or place at a particular time, or

(b) compliance or non-compliance with a condition imposed under section 6B(1)(ii) in relation to the wearing of an electronic monitoring device, 20

may, subject to this section, be given in any proceedings by the production of the following documents:

(i) a statement purporting to be generated automatically or otherwise by a prescribed device by which the person’s whereabouts were electronically monitored; 25

(ii) a certificate—

(I) that the statement relates to the whereabouts of the person at the dates and times shown in it, 30  
and

(II) purporting to be signed by an authorised person who is responsible for monitoring electronically the accused person’s compliance with a condition mentioned in subparagraph (i) or (iv) of section 6(1)(b) or in section 6B(1). 35

(2) Subject to subsection (3), in any proceedings the statement and certificate mentioned in paragraphs (i) and (ii) of subsection (1) are admissible as evidence of the facts contained in them, unless the contrary is shown. 40

(3) Neither the statement nor the certificate is so admissible unless a copy of it has been served on the person concerned before the commencement of the proceedings concerned.”.

**13.**—The Act of 1997 is amended by the insertion of the following section after section 6C:

Arrangements for electronic monitoring.

5 “6D.—The Minister may, with the consent of the Minister for Finance, make such arrangements, including contractual arrangements, as he or she considers appropriate with such persons as he or she thinks fit for monitoring electronically the compliance or non-compliance of persons with a condition mentioned in subparagraph (i) or (iv) of section 6(1)(b) or in section 6B(1)(ii).”.

10 **14.**—Section 8 of the Act of 1997 is amended—

Amendment of section 8 of Act of 1997.

(a) in subsection (1), by the insertion of “(if any)” after “amounts”,

15 (b) in subsection (2), by the substitution of “any moneys conditioned to be paid under a recognisance” for “any recognisance”, and

(c) in subsection (3), by the substitution of “where the courthouse at which the arrested person is conditioned to appear is situate” for “in which the Garda Síochána station is situate”.

20 **15.**—The Act of 1997 is amended by the substitution of the following section for section 9:

Estreatment of recognisance and forfeiture of moneys paid into court.

“9.—(1) This section applies where—

25 (a) an accused person or a person who is appealing against a sentence of imprisonment imposed by the District Court (in either case referred to in this section as ‘the person’) is admitted to bail on entering into a recognisance conditioned for his or her appearance before a specified court on a specified date at a specified time and place, and

30 (b) the person—

(i) fails to appear in accordance with the recognisance and the court issues a warrant for his or her arrest, or

35 (ii) is brought before the court in accordance with subsection (7) and the court is satisfied that the person has contravened a condition of the recognisance.

(2) Where subsection (1) applies, the court may order—

40 (a) that any moneys conditioned to be paid under the recognisance by the person or any surety be estreated in such amount as the court thinks fit,

(b) that any sums paid into court by the person or any surety be forfeited in such amount or amounts as the court thinks fit,

(c) where a bank, building society, credit union or An Post deposit book has been accepted as security for the amount of the recognisance, that the entity concerned pay that amount into court from the moneys held by the person or any surety on deposit therein, and 5

(d) where necessary for estreatment, that a receiver be appointed to take possession or control of the property of the person or any surety and to manage or otherwise deal with it in accordance with the directions of the court. 10

(3) Where a receiver—

(a) appointed under subsection (2)(d) takes any action under this section in relation to property, and

(b) believes, and has reasonable grounds for believing, that he or she is entitled to take that action in relation to the property, 15

he or she shall not be liable to any person in respect of any loss or damage resulting from the action, except in so far as the loss or damage is caused by his or her negligence. 20

(4) The court may, on the application of a member of the Garda Síochána and on information being made in writing and on oath by or on behalf of the member that the person has contravened a condition of the recognisance (other than the condition referred to in subsection (1)(a)), issue a warrant for the arrest of the accused person. 25

(5) A member of the Garda Síochána may arrest the person under subsection (4) notwithstanding that the member does not have the warrant concerned in his or her possession at the time of the arrest. 30

(6) Where subsection (5) applies, the member shall serve the warrant on the arrested person as soon as practicable.

(7) The arrested person shall be brought as soon as practicable before the court.

(8) Where a warrant has been issued under subsection (4), the person and any surety remain bound by their recognisances, and any money paid into court in connection therewith shall not be released before the conclusion of any proceedings under this section. 35

(9) Where the court makes an order under subsection (2), notice shall be given to the person and any surety stating that an application to vary or discharge the order may be made to the court within 21 days from the date of the issue of the notice. 40

(10) On such an application, the court may vary or discharge the order if satisfied that compliance with it would cause undue hardship to the person or any surety. 45

(11) The prosecutor shall be given notice of, and be entitled to be heard in, any proceedings under subsection (10).

(12) If an order under subsection (2) or any variation of it under subsection (10) is not complied with, a warrant of committal of the person for such non-compliance may be issued by the court.”.

5 **16.**—The Act of 1997 is amended by the insertion of the following Regulations.  
section after section 11:

10 “11A.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or for the purpose of enabling any provision of this Act to have full effect.

(2) The regulations may include such consequential, incidental or supplementary provisions as may be necessary for that purpose.

15 (3) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling them is passed by either such House within the next 21 days on which that House has sat after they are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

20

**17.**—The Schedule to the Act of 1997 is amended—

Amendment of  
Schedule to Act of  
1997.

(a) by the substitution of the following paragraph for paragraph 14:

25 “14. Any offence under the following provisions of the Firearms Act 1925:

(a) section 2 (restrictions on possession, use, and carriage of firearms);

(b) section 3 (applications for, and form and effect of, firearm certificates);

30 (c) section 4A(18) (authorisation of rifle or pistol clubs or shooting ranges);

(d) section 10A (reloading of ammunition);

(e) section 15 (possession of firearms with intent to endanger life);

35 (f) section 25 (punishments).”,

(b) by the substitution of the following paragraph for paragraph 16:

“16. Any offence under the following provisions of the Firearms and Offensive Weapons Act 1990:

40 (a) section 7 (possession, sale, etc., of silencers);

(b) section 8 (reckless discharge of firearm);

(c) section 9 (possession of knives and other articles);

(d) section 10 (trespassing with a knife, weapon of offence or other article);

(e) section 11 (production of article capable of inflicting serious injury);

(f) section 12 (power to prohibit manufacture, importation, sale, hire or loan of offensive weapons); 5

(g) section 12A (shortening barrel of shotgun or rifle).”,

(c) by the insertion of the following paragraph after paragraph 16: 10

“16A. Any offence under section 3 of the Firearms (Firearm Certificates for Non-Residents) Act 2000 (prohibition of false information and alteration of firearm certificates).”, 15

and

(d) by the substitution of the following paragraph for paragraph 30:

“30. An offence of attempting or conspiring to commit, or inciting the commission of, any offence mentioned in this Schedule.”. 20

Amendment of section 22 of Act of 1967.

**18.—Section 22 of the Act of 1967 is amended—**

(a) by the insertion of the following subsection after subsection (1):

“(1A) The Court may admit a person to bail without imposing a condition in the recognisance as to payment of moneys into court by the person if it considers it appropriate to do so, having regard to the circumstances of the case, including the means of the person and the nature of the offence in relation to which the person is in custody.”. 25 30

(b) by the substitution of the following subsections for subsections (2) and (3):

“(2) The Court may, instead of taking a recognisance from a person in accordance with subsection (1)—

(a) determine the conditions to be contained in the recognisance, including the amount of any moneys to be paid into court under it, with a view to its being subsequently taken, and 35

(b) in the meantime commit the person concerned to custody in accordance with paragraph (a) of that subsection. 40

(3) A recognisance referred to in subsection (2) may be taken by any judge of the District Court.”.

**19.**—Section 28 of the Act of 1967 is amended by the substitution of the following subsection for subsection (3):

Amendment of section 28 of Act of 1967.

- 5 “(3) (a) An applicant for bail or the prosecutor may appeal to the High Court if dissatisfied with a refusal or grant of the application for bail or, where bail is granted, with any matter relating to the bail.
- 10 (b) Where the applicant has been remanded in custody by the District Court and the offence with which the applicant is charged is triable by the Circuit Court, the High Court may transfer the appeal to the judge of the Circuit Court for the circuit in which the prison or place of detention to which the applicant has been remanded is situated.
- 15 (c) The judge of the Circuit Court referred to in paragraph (b) shall exercise jurisdiction in respect of the appeal.
- (d) An appeal against a decision by the Circuit Court under this section lies to the High Court at the instance of the applicant or prosecutor.”

20 **20.**—Section 31 of the Act of 1967 is amended by the substitution of the following subsection for subsection (3):

Amendment of section 31 of Act of 1967.

“(3) If the recognisance is conditioned for the payment of a sum of money, that sum may be accepted in lieu of a surety or sureties.”

25 **21.**—Section 68 of the Children Act 2001 is amended by the substitution of the following subsection for subsection (4):

Amendment of section 68 of Children Act 2001.

“(4) If the recognisance is conditioned for the payment of a sum of money, that sum may be accepted in lieu of a surety or sureties.”

30 **22.**—Section 11 of the Act of 1984 is amended by the substitution of the following subsection for subsection (1):

Amendment of section 11 of Act of 1984.

“(1) Any sentence of imprisonment passed on a person for an offence—

- 35 (a) committed while on bail, whether committed before or after the commencement of *section 22* of the *Criminal Justice Act 2007*, or
- 40 (b) committed after such commencement while the person is unlawfully at large after the issue of a warrant for his or her arrest for non-compliance with a condition of the recognisance concerned,

shall be consecutive on any sentence passed on him or her for a previous offence or, if he or she is sentenced in respect of two or more previous offences, on the sentence last due to expire, so however that, where two or more consecutive sentences as required by this section are passed by the District Court, the

aggregate term of imprisonment in respect of those consecutive sentences shall not exceed 2 years.”.

Amendment of section 13 of Act of 1984.

23.—Section 13 of the Act of 1984 is amended—

(a) in subsection (1), by the substitution of “€5,000” for “£1,000”, and 5

(b) by the addition of the following subsection:

“(6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 12 months from the date on which the offence was committed.”. 10

### PART 3

#### SENTENCING

Commission of another offence within specified period.

24.—(1) Subject to *subsection (2)*, where a person (other than a person under the age of 18 years)— 15

(a) has been convicted on indictment of an offence specified in *Schedule 2* (in this section referred to as “the first offence”),

(b) has been sentenced to imprisonment for a term of not less than 12 months in respect of that offence, and 20

(c) who commits an offence specified in *Schedule 2* (in this section referred to as “the subsequent offence”) within a period of 7 years (excluding any period of imprisonment) from the date of conviction of the first offence (in this section referred to as “the specified period”), 25

the court shall, in imposing sentence on the person in respect of the subsequent offence, specify as the minimum term of imprisonment to be served by the person a term of not less than three quarters of the maximum term of imprisonment prescribed by law in respect of such an offence and, if the maximum term so prescribed is life imprisonment, the court shall specify a term of imprisonment of not less than 10 years. 30

(2) *Subsection (1)* shall not apply if any of the following provisions apply in respect of the subsequent offence:

(a) section 15(8) of the Act of 1925; 35

(b) section 26(8), 27(8), 27A(8) or 27B(8) of the Act of 1964;

(c) section 12A(13) of the Act of 1990; or

(d) section 27(3CCC) of the Misuse of Drugs Act 1977.

(3) *Subsection (1)* shall apply to a person in respect of the subsequent offence only if that offence is committed after the commencement of this section and that subsection shall apply to a person whether the first offence is committed before or after such commencement. 40

(4) If, in relation to a sentence of a term of imprisonment imposed on a person in respect of the first offence—

(a) the operation of the whole term is suspended, then *subsection (1)* shall not apply to that offence, or

5 (b) the operation of a part of the term is suspended, the part of that term the operation of which is not suspended shall be regarded as the term of imprisonment imposed on the person in respect of the first offence for the purposes of *subsection (1)*.

10 (5) *Subsection (1)* shall not apply to a person if the conviction in respect of the first offence is quashed on appeal or otherwise.

(6) A reference in this section to a sentence imposed on a person in respect of the first offence shall, if the sentence is varied on appeal, be construed as a reference to the sentence as so varied.

15 (7) For the purposes of *subsection (1)(c)*, a period of imprisonment means any time when the person concerned is—

(a) remanded in custody,

(b) serving a sentence in prison, or

20 (c) temporarily released under section 2 of the Criminal Justice Act 1960.

(8) References in this section to the subsequent offence shall include references to a second or subsequent offence specified in *Schedule 2* committed by a person (other than a person under the age of 18 years) during the specified period.

25 (9) The specified period in relation to a person to whom this section applies shall expire only when the person has not been convicted of an offence specified in *Schedule 2* during the previous 7 years.

30 (10) If, following the application of *subsection (1)* to a person in respect of an offence specified in *Schedule 2*—

(a) his or her conviction in respect of the first offence is quashed on appeal or otherwise, or

35 (b) the sentence imposed on the person in respect of the first offence is varied on appeal so that it no longer falls under *subsection (1)(b)*,

the person may apply to the court that imposed the sentence on him or her in respect of the subsequent offence to review it and the court may, if it considers it appropriate to do so, vary that sentence.

40 (11) The power conferred by section 23 of the Criminal Justice Act 1951 to commute or remit a punishment shall not, in the case of a person serving a sentence of imprisonment imposed in accordance with *subsection (1)* in respect of the subsequent offence, be exercised before the expiry of the minimum term of imprisonment specified by the court in accordance with that subsection less any reduction of  
45 that term arising under *subsection (12)*.

(12) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence imposed in accordance with *subsection (1)* in respect of the subsequent offence and the minimum term of imprisonment specified by the court in accordance with that subsection shall be reduced by the amount of any remission so earned by the person. 5

(13) Any powers conferred by rules made under section 2 of the Criminal Justice Act 1960 to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a sentence imposed in accordance with *subsection (1)* in respect of the subsequent offence, be exercised during the period for which the commutation or remission of his or her punishment is prohibited by *subsection (11)* unless for grave reason of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by that reason. 10 15

(14) The reference in *subsection (13)* to section 2 of the Criminal Justice Act 1960 shall be construed to include that section as applied by section 4 of the Prisons Act 1970.

(15) In this section “imprisonment” includes— 20

- (a) detention in Saint Patrick’s Institution, and
- (b) detention in a place provided under section 2 of the Prisons Act 1970,

and “prison” and “sentence of imprisonment” shall be construed accordingly. 25

Crime prevention orders.

**25.—**(1) Where a person (other than a person under the age of 18 years) (in this section referred to as “the offender”)—

- (a) is convicted on indictment of an offence specified in *Schedule 2*, and
- (b) a sentence of imprisonment for a term that is less than the maximum term of imprisonment prescribed by law in respect of such an offence is imposed on the offender in respect of the offence, 30

the court may, in addition to that sentence of imprisonment, make an order under this section (in this section referred to as a “crime prevention order”) in respect of the offender. 35

(2) The Court may specify in a crime prevention order such conditions as it considers necessary for the purposes of ensuring that while the order is in force—

- (a) persons who are likely to be adversely affected by the presence of the offender are protected, and 40
- (b) the offender will not commit any further offences.

(3) A crime prevention order may be made for such period, of less than 10 years, as the court considers appropriate, but that period shall not extend beyond the date on which the maximum term of imprisonment prescribed by law in respect of the offence concerned would have expired had it been imposed. 45

(4) A crime prevention order in respect of the offender shall come into force on the date on which the term of imprisonment imposed on him or her in respect of the offence concerned expires or, as the case may be, his or her remission from the sentence begins.

5 (5) The court shall have regard to the nature of the offence concerned for the purposes of determining the conditions to be specified in a crime prevention order.

(6) A crime prevention order may, in relation to the offender, include conditions—

10 (a) requiring him or her to keep the peace,

(b) restricting or prohibiting him or her gaining access to specified places, where appropriate, at specified times,

15 (c) restricting or prohibiting him or her making contact (including by postal, telephonic or electronic means) with specified persons, where appropriate, at specified times,

20 (d) requiring him or her to give prior notification to an inspector of the Garda Síochána in the area where he or she normally resides in relation to a change of address or any plans to travel in circumstances in which he or she expects to be absent from his or her usual address for a period of more than 7 days,

(e) requiring him or her to give prior notification to such an inspector of any change in his or her employment or place of education.

25 (7) The court may stipulate different periods in respect of different conditions.

30 (8) The court, when making a crime prevention order in respect of the offender, shall have regard to any other order, restriction or obligation to which the offender is subject, whether made or imposed under statute or otherwise, arising from a conviction for any offence or to which the offender will be so subject while the crime prevention order is in force.

35 (9) The court, when determining the conditions to be specified in a crime prevention order in respect of the offender, shall have regard to any conditions imposed on the offender under any order, restriction or obligation to which he or she is subject, whether made or imposed under statute or otherwise, arising from a conviction for any offence or to which the offender will be so subject while the crime prevention order is in force, and the court shall not specify conditions  
40 in the crime prevention order that are inconsistent with those other conditions.

(10) At any time before a crime prevention order comes into force, the court may, if it so thinks proper, on the application of the offender vary the order if it is satisfied that by reason of such factors  
45 or circumstances specified in the application that have occurred since the making of the order that it should be varied.

(11) An application under *subsection (10)* shall be made on notice to an inspector of the Garda Síochána in the area in which the offender resided at the time the crime prevention order concerned  
50 was made.

(12) Where a crime prevention order is in force, the court that made the order may, if it so thinks proper, on the application of the offender vary or revoke the order if it is satisfied that by reason of such factors or circumstances specified in the application that have occurred since the making of the order that it should be varied or revoked. 5

(13) An application under *subsection (12)* shall be made on notice to an inspector of the Garda Síochána in the area in which the offender ordinarily resides at the time of the application.

(14) An application under *subsection (12)* shall not be made 10 before the expiration of—

(a) one quarter of the period for which the crime prevention order concerned is in force, or

(b) 6 months after that order comes into force,

whichever occurs first, and such an application may be made at inter- 15 vals of not less than 4 months but no more than 2 such applications may be made in any period of 12 months.

(15) A person who fails, without reasonable cause, to comply with a crime prevention order or any condition to which it is subject shall be guilty of an offence and shall be liable on summary conviction to 20 a fine not exceeding €2,000 or imprisonment for a term not exceeding 6 months or both.

(16) Nothing in this section shall affect any other order, restriction or obligation, or any condition attaching thereto, to which the offender is subject whether made or imposed under statute or other- 25 wise apart from this section while a crime prevention order is in force.

(17) In this section “remission from the sentence” means, in relation to the sentence imposed on the offender, the remission which he or she may earn from the sentence under the rules or prac- 30 tice whereby prisoners generally may earn remission of sentence by industry and good conduct.

## PART 4

### INFERENCES TO BE DRAWN IN CERTAIN CIRCUMSTANCES

Inferences from failure or refusal to account for objects, marks, etc.

**26.—(1)** The Act of 1984 is amended by the substitution of the 35 following section for section 18:

“18.—(1) Where in any proceedings against a person for an arrestable offence evidence is given that the accused—

(a) at any time before he or she was charged with the offence, on being questioned by a member of the 40 Garda Síochána in relation to the offence, or

(b) when being charged with the offence or informed by a member of the Garda Síochána that he or she might be prosecuted for it,

was requested by the member to account for any object, sub- 45 stance or mark, or any mark on any such object, that was—

- (i) on his or her person,
- (ii) in or on his or her clothing or footwear,
- (iii) otherwise in his or her possession, or
- (iv) in any place in which he or she was during any specified period,

and which the member reasonably believes may be attributable to the participation of the accused in the commission of the offence and the member informed the accused that he or she so believes, and the accused failed or refused to give an account, being an account which in the circumstances at the time clearly called for an explanation from him or her when so questioned, charged or informed, as the case may be, then, the court, in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967 or whether there is a case to answer and the court (or, subject to the judge's directions, the jury) in determining whether the accused is guilty of the offence charged (or of any other offence of which he or she could lawfully be convicted on that charge) may draw such inferences from the failure or refusal as appear proper; and the failure or refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to which the failure or refusal is material.

(2) A person shall not be convicted of an offence solely or mainly on an inference drawn from a failure or refusal to account for a matter to which subsection (1) applies.

(3) Subsection (1) shall not have effect unless—

- (a) the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of the failure or refusal to account for a matter to which that subsection applies might be, and
- (b) the accused was afforded a reasonable opportunity to consult a solicitor before such failure or refusal occurred.

(4) Nothing in this section shall, in any proceedings—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his or her presence relating to the conduct in respect of which he or she is charged in so far as evidence thereof would be admissible apart from this section,
- (b) be taken to preclude the drawing of any inference from the silence or other reaction of the accused which could properly be drawn apart from this section, or
- (c) be taken to preclude the drawing of any inference from a failure or refusal to account for the presence of an object, substance or mark or for the condition of clothing or footwear which could properly be drawn apart from this section.

(5) The court (or, subject to the judge’s directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to whenever, if appropriate, the account of the matter concerned was first given by the accused.

(6) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded. 5

(7) Subsection (1) shall apply to the condition of clothing or footwear as it applies to a substance or mark thereon. 10

(8) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial. 15

(9) In this section ‘arrestable offence’ has the meaning it has in section 2 (as amended by section 8 of the Criminal Justice Act 2006) of the Criminal Law Act 1997.”.

(2) This section shall not apply to a failure or refusal to account for the presence of an object, substance or mark or for the condition of clothing or footwear if the failure or refusal occurred before the commencement of this section. 20

(3) *Subsection (1)* shall not affect the application of section 18 of the Act of 1984 to a failure or refusal to account for the presence of an object, substance or mark or for the condition of clothing or footwear if the failure or refusal occurred before the commencement of this section, and that section shall apply to such a failure or refusal as if *subsection (1)* had not been enacted. 25

Inferences from failure or refusal to account for accused’s presence at a particular place.

**27.—**(1) The Act of 1984 is amended by the substitution of the following section for section 19: 30

“19.—(1) Where in any proceedings against a person for an arrestable offence evidence is given that the accused—

(a) at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, or 35

(b) when being charged with the offence or informed by a member of the Garda Síochána that he or she might be prosecuted for it,

was requested by the member to account for his or her presence at a particular place at or about the time the offence is alleged to have been committed, and the member reasonably believes that the presence of the accused at that place and at that time may be attributable to his or her participation in the commission of the offence and the member informed the accused that he or she so believes, and the accused failed or refused to give an account, being an account which in the circumstances at the time clearly called for an explanation from him or her when so questioned, charged or informed, as the case may be, then, the court, in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967 or whether there is a 40 45 50

5 case to answer and the court (or, subject to the judge's directions, the jury) in determining whether the accused is guilty of the offence charged (or of any other offence of which he or she could lawfully be convicted on that charge) may draw such inferences from the failure or refusal as appear proper; and the failure or refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to which the failure or refusal is material.

10 (2) A person shall not be convicted of an offence solely or mainly on an inference drawn from a failure or refusal to account for his or her presence at a particular place under subsection (1).

(3) Subsection (1) shall not have effect unless—

15 (a) the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of the failure or refusal to account for his or her presence at a particular place might be, and

20 (b) the accused was afforded a reasonable opportunity to consult a solicitor before such failure or refusal occurred.

(4) Nothing in this section shall, in any proceedings—

25 (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his or her presence relating to the conduct in respect of which he or she is charged in so far as evidence thereof would be admissible apart from this section,

30 (b) be taken to preclude the drawing of any inference from the silence or other reaction of the accused which could properly be drawn apart from this section, or

35 (c) be taken to preclude the drawing of any inference from the failure or refusal of a person to account for his or her presence which could properly be drawn apart from this section.

40 (5) The court (or, subject to the judge's directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to whenever, if appropriate, the account of his or her presence at a particular place concerned was first given by the accused.

45 (6) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

50 (7) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.

(8) In this section ‘arrestable offence’ has the meaning it has in section 2 (as amended by section 8 of the Criminal Justice Act 2006) of the Criminal Law Act 1997.”.

(2) This section shall not apply to a failure or refusal of a person to account for his or her presence if the failure or refusal occurred before the commencement of this section. 5

(3) *Subsection (1)* shall not affect the application of section 19 of the Act of 1984 to a failure or refusal of a person to account for his or her presence if the failure or refusal occurred before the commencement of this section, and that section shall apply to such a failure or refusal as if *subsection (1)* had not been enacted. 10

Inferences from failure of accused to mention particular facts.

**28.**—The Act of 1984 is amended by the insertion of the following section after section 19:

“19A.—(1) Where in any proceedings against a person for an arrestable offence evidence is given that the accused— 15

(a) at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, or

(b) when being charged with the offence or informed by a member of the Garda Síochána that he or she might be prosecuted for it, 20

failed to mention any fact relied on in his or her defence in those proceedings, being a fact which in the circumstances existing at the time clearly called for an explanation from him or her when so questioned, charged or informed, as the case may be, then, the court, in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967 or whether there is a case to answer and the court (or, subject to the judge’s directions, the jury) in determining whether the accused is guilty of the offence charged (or of any other offence of which he or she could lawfully be convicted on that charge) may draw such inferences from the failure as appear proper; and the failure may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to which the failure is material. 25 30 35

(2) A person shall not be convicted of an offence solely or mainly on an inference drawn from a failure to mention a fact to which subsection (1) applies.

(3) Subsection (1) shall not have effect unless—

(a) the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of the failure to mention a fact to which that subsection applies might be, and 40

(b) the accused was afforded a reasonable opportunity to consult a solicitor before such failure occurred. 45

(4) Nothing in this section shall, in any proceedings—

5 (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his or her presence relating to the conduct in respect of which he or she is charged in so far as evidence thereof would be admissible apart from this section, or

10 (b) be taken to preclude the drawing of any inference from the silence or other reaction of the accused which could properly be drawn apart from this section.

15 (5) The court (or, subject to the judge’s directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to when the fact concerned was first mentioned by the accused.

(6) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

20 (7) Subject to section 7 of the Criminal Justice (Drug Trafficking) Act 1996 and section 5 of the Offences Against the State (Amendment) Act 1998, this section shall not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

25 (8) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.

30 (9) In this section ‘arrestable offence’ has the meaning it has in section 2 (as amended by section 8 of the Criminal Justice Act 2006) of the Criminal Law Act 1997.”.

**29.—**(1) Section 2 of the Offences Against the State (Amendment) Act 1998 is amended—

Amendment of section 2 of Offences Against the State (Amendment) Act 1998.

35 (a) in subsection (1), by—

(i) the substitution of “in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967” for “in determining whether to send forward the accused for trial”, and

40 (ii) the substitution of “a person shall not be convicted of the offence solely or mainly on an inference drawn from such a failure” for “a person shall not be convicted of the offence solely on an inference drawn from such a failure”,

45 (b) by the substitution of the following subsection for subsection (2):

“(2) Subsection (1) shall not have effect unless—

- (a) the accused was told in ordinary language when being questioned what the effect of such a failure might be, and
- (b) the accused was afforded a reasonable opportunity to consult a solicitor before such a failure occurred.”, 5

and

- (c) by the insertion of the following subsections after subsection (3):

“(3A) The court (or, subject to the judge’s directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to whenever, if appropriate, an answer to the question concerned was first given by the accused. 10

(3B) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded. 15

(3C) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.”. 20

- (2) This section shall not apply to a failure to answer a question to which section 2 of the Offences Against the State (Amendment) Act 1998 relates if the failure occurred before the commencement of this section. 25

## PART 5

### MISUSE OF DRUGS

Amendment of section 27 of Misuse of Drugs Act 1977.

- 30.**—(1) Section 27 of the Misuse of Drugs Act 1977 is amended— 30

- (a) in subsection (3A)(a), by the substitution of “subject to subsections (3B) and (3C) of this section or, where subsection (3CCC) of this section applies” for “subject to subsections (3B) to (3CC) of this section or, where subsection (3CCCC) of this section applies”, 35

- (b) by the substitution of the following subsections for subsections (3C) to (3CCCC):

“(3C) (a) The purpose of this subsection is to provide that in view of the harm caused to society by drug trafficking, a court, in imposing sentence on a person (other than a child or young person) for an offence under section 15A or 15B of this Act, shall specify as the minimum period of imprisonment to be served by the person a period of not less than 10 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of the offence, 40 45

it would be unjust in all the circumstances to do so.

5 (b) Subsection (3B) of this section shall not apply where the court is satisfied that there are exceptional and specific circumstances relating to the offence, or the person convicted of the offence, which would make a sentence of not less than 10 years imprisonment unjust in all the circumstances and for this purpose the court may, subject to this subsection, have regard to any matters it considers appropriate, including—

10 (i) whether that person pleaded guilty to the offence and, if so—

15 (I) the stage at which he indicated the intention to plead guilty, and

(II) the circumstances in which the indication was given,

and

20 (ii) whether that person materially assisted in the investigation of the offence.

25 (c) The court, in considering for the purposes of paragraph (b) of this subsection whether a sentence of not less than 10 years imprisonment is unjust in all the circumstances, may have regard, in particular, to—

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

30 (ii) whether the public interest in preventing drug trafficking would be served by the imposition of a lesser sentence.

35 (3CC) Subsections (3B) and (3C) of this section apply and have effect only in relation to a person convicted of a first offence under section 15A or 15B of this Act (other than a person who falls under paragraph (a) or (c) of subsection (3CCC) of this section), and accordingly references in those first-mentioned subsections to an offence under section 15A or 15B of this Act are to be construed as references to a first such offence.

40 (3CCC) Where a person (other than a child or young person)—

45 (a) is convicted of a first offence under section 15A or 15B of this Act and the market value of the controlled drug concerned or, as the case may be, the aggregate of the market values of the controlled drugs concerned amounts to €500,000 or more,

50 (b) is convicted of a second or subsequent offence under section 15A or 15B of this Act, or

(c) is convicted of a first offence under one of those sections and has been convicted under the other of those sections,

the court shall, in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years. 5

(3CCCC) If the court is satisfied that a member of the Garda Síochána or an officer of customs and excise has knowledge of the unlawful sale or supply of controlled drugs, that member or officer, as the case may be, shall be entitled for the purposes of subsection (3CCC)(a) of this section to be heard and to give evidence as to— 10

(a) the market value of the controlled drug concerned, or

(b) the aggregate of the market values of the controlled drugs concerned.”, 15

(c) in subsection (3G), by the substitution of “an offence under section 15A or 15B of this Act” for “an offence under section 15A of this Act”, and

(d) by the substitution of the following subsection for subsection (3K): 20

“(3K) In this section—

‘drug trafficking’ and ‘drug trafficking offence’ have the meanings they have in section 3(1) of the Criminal Justice Act 1994; 25

‘market value’ and ‘an officer of customs and excise’ have the meanings they have in section 15A of this Act.”.

(2) The text of subsections (3A) to (3K) of the said section 27, as amended by *subsection (1)* and other enactments, is set out in the Table to this section. 30

TABLE

(3A) Every person guilty of an offence under section 15A or 15B of this Act shall be liable, on conviction on indictment—

(a) to imprisonment for life or such shorter period as the court may determine, subject to subsections (3B) and (3C) of this section or, where subsection (3CCC) of this section applies, to that subsection, and 35

(b) at the court’s discretion, to a fine of such amount as the court considers appropriate.

(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. 40

(3B) Where a person (other than a child or young person) is convicted of an offence under section 15A or 15B of this Act, the court shall, in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years imprisonment. 45

(3C) (a) The purpose of this subsection is to provide that in view of the harm caused to society by drug trafficking, a court, in imposing sentence on a person (other than a child or young person) for an offence under section 15A or 15B of this Act, shall specify as the 50

minimum period of imprisonment to be served by the person a period of not less than 10 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of the offence, it would be unjust in all the circumstances to do so.

5

(b) Subsection (3B) of this section shall not apply where the court is satisfied that there are exceptional and specific circumstances relating to the offence, or the person convicted of the offence, which would make a sentence of not less than 10 years imprisonment unjust in all the circumstances and for this purpose the court may, subject to this subsection, have regard to any matters it considers appropriate, including—

10

(i) whether that person pleaded guilty to the offence and, if so—

15

(I) the stage at which he indicated the intention to plead guilty, and

(II) the circumstances in which the indication was given,

and

(ii) whether that person materially assisted in the investigation of the offence.

20

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

25

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

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

30

(3CC) Subsections (3B) and (3C) of this section apply and have effect only in relation to a person convicted of a first offence under section 15A or 15B of this Act (other than a person who falls under paragraph (a) or (c) of subsection (3CCC) of this section), and accordingly references in those first-mentioned subsections to an offence under section 15A or 15B of this Act are to be construed as references to a first such offence.

35

(3CCC) Where a person (other than a child or young person)—

(a) is convicted of a first offence under section 15A or 15B of this Act and the market value of the controlled drug concerned or, as the case may be, the aggregate of the market values of the controlled drugs concerned amounts to €500,000 or more,

40

(b) is convicted of a second or subsequent offence under section 15A or 15B of this Act, or

(c) is convicted of a first offence under one of those sections and has been convicted under the other of those sections,

45

the court shall, in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years.

50

(3CCCC) If a court is satisfied that a member of the Garda Síochána or an officer of customs and excise has knowledge of the unlawful sale or supply of controlled drugs, that member or officer, as the case may be, shall be entitled for the purposes of subsection (3CCC)(a) of this section to be heard and to give evidence as to—

(a) the market value of the controlled drug concerned, or

(b) the aggregate of the market values of the controlled drugs concerned.

(3D) The power conferred by section 23 of the Criminal Justice Act 1951 to commute or remit a punishment shall not, in the case of a person serving a sentence imposed under subsection (3A) of this section, be exercised before the expiry of the minimum period specified by the court under subsection (3B) of this section less any reduction of that period under subsection (3E) of this section. 5

(3E) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence imposed under subsection (3A) of this section and the minimum period specified by the court under subsection (3B) of this section shall be reduced by the amount of any remission so earned by that person. 10

(3F) Any powers conferred by rules made under section 2 of the Criminal Justice Act 1960 to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a sentence imposed under subsection (3A) of this section, be exercised during the period for which the commutation or remission of his punishment is prohibited by subsection (3D) of this section unless for grave reason of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by that reason. 15

(3G) In imposing a sentence on a person convicted of an offence under section 15A or 15B of this Act, a court— 20

- (a) may inquire whether at the time of commission of the offence the person was addicted to one or more controlled drugs, and
- (b) if satisfied that the person was so addicted at that time and that the addiction was a substantial factor leading to the commission of the offence, may list the sentence for review after the expiry of not less than one-half of the period specified by the court under subsection (3B) of this section. 25

(3H) On reviewing a sentence listed under subsection (3G)(b) of this section, the court—

- (a) may suspend the remainder of the sentence on any conditions it considers fit, and 30
- (b) in deciding whether to exercise its powers under this subsection, may have regard to any matters it considers appropriate.

(3I) Paragraph (a) of section 13(2) of the Criminal Procedure Act 1967 shall not apply in relation to an offence under section 15A or 15B of this Act, but each of those offences shall be deemed for the purposes of paragraph (b) of section 13(2) of that Act to be an offence to which section 13 of that Act applies. 35

(3J) The reference in subsection (3F) of this section to section 2 of the Criminal Justice Act 1960 shall be construed to include that section as applied by section 4 of the Prisons Act 1970. 40

(3K) In this section—

“drug trafficking” and “drug trafficking offence” have the meanings they have in section 3(1) of the Criminal Justice Act 1994;

“market value” and “an officer of customs and excise” have the meanings they have in section 15A of this Act. 45

## PART 6

### AMENDMENT OF FIREARMS ACTS 1925 TO 2006

Amendment of section 2 of Act of 1925.

**31.**—Section 2 of the Act of 1925 is amended—

- (a) in subsection (5)(a), by the substitution of “, (j) or (k)” for “or (j)”, and 50

(b) by the insertion of the following subsection after subsection (6):

5 “(7) The superintendent of any district may authorise the Board of the National Museum in writing to possess for a specified period a firearm that is a museum heritage object within the meaning of the National Cultural Institutions Act 1997.”.

32.—Section 15 of the Act of 1925 is amended—

Amendment of section 15 of Act of 1925.

10 (a) by the insertion of the following subsection after subsection (4):

15 “(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (except a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 10 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

(b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

25 33.—Section 26 of the Act of 1964 is amended—

Amendment of section 26 of Act of 1964.

(a) by the insertion of the following subsection after subsection (4):

30 “(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

40 (b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

34.—Section 27 of the Act of 1964 is amended—

Amendment of section 27 of Act of 1964.

(a) by the insertion of the following subsection after subsection (4):

45 “(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to

society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 10 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

(b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

Amendment of section 27A of Act of 1964.

**35.—Section 27A of the Act of 1964 is amended—**

(a) in subsection (1), by the insertion of “or ammunition” after “firearm”,

(b) by the insertion of the following subsection after subsection (4):

“(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

(c) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

Amendment of section 27B of Act of 1964.

**36.—Section 27B of the Act of 1964 is amended—**

(a) by the insertion of the following subsection after subsection (4):

“(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

(b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

37.—Section 12A of the Act of 1990 is amended—

Amendment of section 12A of Act of 1990.

(a) by the insertion of the following subsection after subsection (9):

“(9A) The purpose of subsections (10) and (11) is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

(b) in subsection (10), by the insertion of “, subject to subsection (11),” after “and for this purpose the court may”, and

(c) in subsection (13)(b), by the insertion of “27” after “section 26,”.

PART 7

AMENDMENT OF GARDA SÍOCHÁNA ACT 2005

38.—The Act of 2005 is amended by the insertion of the following Chapter after section 33:

Establishment and functions of Garda Síochána Executive Management Board.

“CHAPTER 3A

*Establishment and functions of Garda Síochána Executive Management Board*

Establishment day. 33A.—The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Chapter.

Establishment of Garda Síochána Executive Management Board. 33B.—On the establishment day, a body to be known as An Bord Bainistíochta Feidhmiúcháin an Gharda Síochána or, in the English language, the Garda Síochána Executive Management Board (in this Chapter referred to as “the Board”) stands established to perform the function assigned to it by this Chapter.

Membership of Board. 33C.—(1) The Board consists of—

(a) executive members who are responsible for performing the Board’s function, and

(b) 3 non-executive members, who participate in an advisory capacity in relation to the performance of that function.

(2) The executive members of the Board are—

- (a) the Garda Commissioner, who is its chairperson,
- (b) the Deputy Garda Commissioners, and
- (c) a member of the civilian staff of the Garda Síochána of a grade equivalent to that of Deputy Garda Commissioner.

5

(3) The non-executive members of the board are persons who are not serving or former members of the Garda Síochána or its civilian staff.

10

(4) At least one of the non-executive members of the Board shall be a woman and at least one of them shall be a man.

15

Appointment,  
etc., of non-  
executive  
members.

33D.—(1) The non-executive members of the Board shall—

- (a) be appointed by the Government on the nomination of the Minister,
- (b) be persons who have expertise in the strategic and financial management of organisations, the management of their human resources or the planning and review functions relating to them or have other relevant experience, and
- (c) serve on the board in a non-executive capacity to provide advice in relation to annual policing plans, budgetary matters, allocation of resources, technology, equipment, setting of targets, training, development and leadership and other related matters.

20

25

30

(2) Subject to subsection (5), a non-executive member holds office for a period of 4 years and is eligible for re-appointment for a second term.

35

(3) The terms and conditions of appointment of non-executive members, including those relating to remuneration, shall be determined by the Minister in consultation with the Minister for Finance.

(4) A non-executive member may at any time resign his or her office by letter addressed to the Minister, and the resignation takes effect on the date of receipt of the letter.

40

(5) A non-executive member may be removed from office by the Government for stated reasons or if in its opinion the member has become incapable through ill health or incapacity of effectively performing the duties of the office.

45

(6) Whenever the number of non-executive members falls below 3, the vacancy or vacancies shall be filled by appointment in accordance with subsection (1).

5 (7) A non-executive member who is appointed to fill a vacancy holds office for the remainder of the term of office of the replaced member.

10 (8) The Board may act notwithstanding any such vacancy or any resulting non-compliance with section 33C(4).

(9) A person ceases to be a non-executive member as soon as he or she—

(a) is nominated as a member of Seanad Éireann,

15 (b) is elected as a member of either House of the Oireachtas or of the European Parliament,

20 (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy, or

(d) becomes a member of a local authority.

25 Function of Board.

33E.—(1) The function of the Board is to keep under review the performance by the Garda Síochána of its functions and the arrangements and strategies in place to support and enhance the performance of those functions.

30 (2) In particular, the Board shall keep under review the adequacy of—

(a) the performance by the Garda Síochána of its functions,

35 (b) the arrangements and strategies in place to support and enhance that performance,

(c) the corporate governance arrangements and structures within the Garda Síochána,

40 (d) the arrangements for the recruitment, training and development of the members and civilian staff of the Garda Síochána, and

45 (e) the mechanisms in place within the Garda Síochána for the measurement of performance and accountability of such members and staff.

Provision of information to non-executive members by Garda Commissioner.	33F.—The Garda Commissioner shall make available to the non-executive members of the Board any information which is relevant to the performance of their functions.	
Reports to Minister.	33G.—(1) The Board shall furnish to the Minister, at six-monthly intervals, a report on the performance of its function.	5
	(2) The Minister shall cause a copy of the report to be laid before each House of the Oireachtas as soon as may be after its receipt.	10
Saving.	33H.—The performance by the Board of its function is without prejudice to, and in no way limits, the performance by the Garda Commissioner of his or her functions under section 26 or his or her accountability for the direction, control, management and operational efficiency of the Garda Síochána.”.	15
Special inquiries relating to Garda Síochána.	<b>39.</b> —The Act of 2005 is amended by the substitution of the following section for section 42:	
“Special inquiries relating to Garda Síochána.	42.—(1) The Minister, with respect to any matter considered by him or her to be of public concern, may by order appoint a person to—	20
	(a) inquire into any aspect of administration, operation, practice or procedure of the Garda Síochána, or the conduct of its members, and	25
	(b) make a report to the Minister on the conclusion of the inquiry.	
	(2) A person who, in the Minister’s opinion, has the experience, qualifications, training or expertise appropriate for the inquiry may be appointed to conduct the inquiry.	30
	(3) The Minister shall specify the terms of reference of the inquiry in the order under subsection (1) and may, by order, made at any time before the submission of the final report, amend those terms for the purpose of clarifying, limiting or extending the scope of the inquiry.	35
	(4) For the purpose of the inquiry, the appointed person—	40
	(a) may require a member of the Garda Síochána, or any other person, who possesses information or possesses or controls a document or thing that is relevant to the inquiry to provide the information, document or thing to the appointed person, and	45
	(b) where appropriate, may require the member or other person to attend	

before the appointed person for that purpose.

5 (5) The member or other person shall cooperate with the inquiry and answer fully and truthfully any question put to him or her by the appointed person.

10 (6) Where the member or other person fails to comply with a requirement under subsection (4), the High Court may, on application by the appointed person and on notice to the member or other person—

(a) order the member or person to comply with the requirement, and

15 (b) include in the order any other provision it considers necessary to enable the order to have full effect.

20 (7) If the member or other person fails to comply with such an order, the Court may treat the failure for all purposes as if it were a contempt of the Court.

(8) A failure by the member to comply with a requirement under subsection (4) may be the subject of disciplinary action in accordance with the Disciplinary Regulations.

25 (9) Any information, document or thing provided by a person in accordance with a requirement under subsection (4) is not admissible in any criminal proceedings against the person, and this shall be explained to the person in ordinary language by the appointed person.

30 (10) The Minister may publish all or part of any report received under this section.

35 (11) This section applies even if the matter considered by the Minister to be of public concern arose before the passing of this Act.

(12) The power to order an inquiry under this Act is additional to any power conferred by this or another Act relating to inquiries or investigations.

(13) In this section—

40 ‘appointed person’ means a person appointed under this section to conduct an inquiry;

‘criminal proceedings’ does not include disciplinary proceedings.”.

45 **40.**—The Act of 2005 is amended—

Other amendments to Act of 2005.

(a) in section 11(2), by the substitution of “, Deputy Garda Commissioner or Assistant Garda Commissioner” for “Deputy Garda Commissioner”,

(b) in section 15, by the addition of the following subsection:

“(6) The Protection of Employees (Part-Time Work) Act 2001 does not apply in relation to a reserve member.”,

(c) in section 39—

(i) in subsection (1), by the insertion of “or a designated officer of the Ombudsman Commission” after “rank”, and 5

(ii) in subsections (3) and (4), by the insertion of “or designated officer” after “rank”,

(d) in section 44— 10

(i) in subsection (2)(a), by the insertion of “or a member of the civilian staff of the Garda Commissioner of a grade equivalent to that of Deputy Garda Commissioner” after “Deputy Garda Commissioner”, and 15

(ii) by the addition of the following subsection:

“(7) The audit committee may act notwithstanding one or more than one vacancy in its membership, including a vacancy that results in subsection (2) not being complied with.”, 20

(e) in section 47(3), by the substitution of the following paragraph for paragraph (a):

“(a) the period beginning on 1 July 2007 and ending 3 months after that date, and”,

(f) in section 75(3)(c), by the insertion of “chairperson of the” after “the”, 25

(g) in section 79(10), by the insertion of “Commission” after “Ombudsman”,

(h) in section 82(2), by the substitution of “under the provisions” for “under the provision”, 30

(i) in section 94(7), by the substitution of “may have been committed” for “has been committed”,

(j) in section 98(1), by the deletion of “, in relation to the member of the Garda Síochána under investigation,”,

(k) in section 99(1), by the deletion of “in the prescribed form”, and 35

(l) in section 117(6)(b), by the substitution of “with such police service or” for “with any”.

41.—The Sea-Fisheries and Maritime Jurisdiction Act 2006 is amended—

Amendments to  
Sea-Fisheries Acts  
2003 and 2006.

5 (a) by inserting after section 17 the following new section:

“Search  
warrants.

17A.—(1) This section applies to an offence under the *Sea-Fisheries Acts 2003 to 2007*.

10 (2) A judge of the District Court, on hearing evidence on oath given by a sea-fisheries protection officer, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to the commission of, an offence to which this section applies is to be found in any place, issue a warrant for the search of that place and any persons found there.

15 (3) A warrant under this section shall be expressed and shall operate to authorise a named sea-fisheries protection officer, alone or accompanied by such other persons as may be necessary—

25 (a) to enter (if necessary by the use of reasonable force) and on production of the warrant (if so requested), within 7 days from the date of issuing of the warrant, the place named in the warrant,

30 (b) to search it and any persons found there,

(c) while there, to exercise any of the functions of a sea-fisheries protection officer—

35 (i) under section 17, and

(ii) under section 18, if the place is a sea-fishing boat,

40 (d) to otherwise examine, take, remove and detain any thing found there, or in the possession of a person present there at the time of the search, which the sea-fisheries protection officer reasonably believes to be evidence of or relating to the commission of an offence to which this section applies, and

45 (e) to take any other steps which may appear to the sea-fisheries

protection officer to be necessary for preserving any such thing and preventing interference with it.

(4) The authority conferred by subsection (3)(d) to take, remove and detain any thing includes, in the case of records, authority— 5

(a) to make and retain a copy of the records, and 10

(b) where necessary, to seize and, for as long as necessary, retain any computer or other storage medium in which any record is kept. 15

(5) A sea-fisheries protection officer acting under the authority of a warrant under this section may—

(a) operate any computer at the place which is being searched or cause any such computer to be operated by a person accompanying the officer for that purpose, and 20

(b) require any person at that place who appears to the officer to have lawful access to the information in any such computer— 25

(i) to give to the officer any password necessary to operate it, 30

(ii) otherwise to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible, or 35

(iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible. 40

(6) Where any sea-fisheries protection officer has entered a place in the execution of a warrant issued under this section, he or she may seize and detain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued. 45 50

(7) The power to issue a warrant under this section—

5 (a) is without prejudice to the exercise of a function by a sea-fisheries protection officer under any other provision of the *Sea-Fisheries Acts 2003 to 2007*, and

10 (b) is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.

15 (8) A sea-fisheries protection officer to whom a warrant under this section has been issued shall, if not in uniform and if requested by a person affected, produce evidence of his or her authority as such an officer.

(9) In this section—

20 ‘commission’, in relation to an offence, includes an attempt to commit the offence;

25 ‘computer at the place which is being searched’ includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of that computer;

30 ‘place’ includes a dwelling, a building or other structure or part of a building or other structure, a vehicle, a sea-fishing boat or other vessel, an aircraft, an installation in the territorial seas or in a designated area (within the meaning of the Continental Shelf Act 1968) and a tent, caravan or other temporary or movable structure;

35 ‘thing’ includes any thing that may be inspected by a sea-fisheries protection officer pursuant to section 17 or 18.”,

(b) in section 28—

(i) by substituting for subsection (1) the following:

40 “(1) A person guilty of an offence committed on board a sea-fishing boat under a provision of—

(a) Chapter 2 specified in column (2) of Table 1, or

(b) the Act of 2003 specified in column (2) of Table 2,

45 is liable, on conviction on indictment, to the fine specified in column (3) of that Table at the reference number at which that provision is specified in respect of the category of sea-fishing boat mentioned in that

column and to the forfeiture specified in subsection (5).

(1A) A person guilty of an offence under section 11, 12, 13, 14 or 15, which is not committed on board a sea-fishing boat, in respect of the buying, handling, weighing, trans-shipping, transporting, landing, processing, storing, documenting or selling of fish is liable, on conviction on indictment, to a fine not exceeding €100,000. Any fish found to which the offence relates used in the commission of the offence are, as a statutory consequence of the conviction, forfeited.”

and

(ii) in subsection (2), by substituting “subsection (1) or (1A)” for “subsection (1)”,

and

(c) in section 29, by inserting “or under section 28(1A)” after “Table”.

## PART 9

### MISCELLANEOUS

Amendment of Garda Síochána (Complaints) Act 1986.

**42.**—(1) Paragraph 2 of the First Schedule to the Garda Síochána (Complaints) Act 1986 is amended by the insertion of the following subparagraph after subparagraph (3):

“(3A) Notwithstanding subparagraphs (2) and (3), the term of office of a member of the Board ceases on the commencement of Schedule 1 to the Garda Síochána Act 2005 in so far as that Schedule relates to the repeal of this Act.”

(2) Paragraph 1 of the Third Schedule to that Act is amended by the insertion of the following subparagraph after subparagraph (3):

“(3A) Notwithstanding subparagraphs (2) and (3), the term of office of a member of the Board ceases on the commencement of Schedule 1 to the Garda Síochána Act 2005 in so far as that Schedule relates to the repeal of this Act.”

Amendment of Act of 2006.

**43.**—The Act of 2006 is amended by the substitution of the following sections for section 183:

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

183.—(1) A person is guilty of an offence if he or she possesses or controls any article in circumstances giving rise to a reasonable inference that he or she possesses or controls it for a purpose connected with the commission, preparation, facilitation or instigation of—

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

(b) a drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994,

(c) murder,

(d) murder to which section 3 of the Criminal Justice Act 1990 applies, or

(e) 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) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he or she did not possess or control the article concerned for a purpose specified in subsection (1).

(3) Where a person is charged with an offence under this section, 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 to imprisonment for a term not exceeding 5 years or both.

(5) In this section—

‘article’ means a substance, document or 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;

‘information in non-legible form’ includes information on microfilm, magnetic tape or disk.

Possession of financial assets intended for use in connection with certain offences.

183A.—(1) A person is guilty of an offence if he or she possesses or controls financial assets of a value of not less than €5,000 in circumstances giving rise to a reasonable inference that he or she possesses or controls the assets concerned for a purpose connected with the commission, preparation, facilitation or instigation of—

(a) an offence under section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001,

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

- (c) a drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994,
- (d) an offence under section 17 of the Criminal Justice (Public Order) Act 1994, 5
- (e) murder,
- (f) murder to which section 3 of the Criminal Justice Act 1990 applies, or
- (g) 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. 10

(2) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he or she did not possess or control the assets concerned for a purpose specified in subsection (1). 15

(3) Where a person is charged with an offence under this section, 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. 20

(4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or both. 25

(5) In this section—

‘debentures’ means debenture stock, loan stock and bonds; 30

‘financial assets’ means coins and notes in any currency, bank drafts, cheques drawn on any bank, postal orders, transferable securities, certificates of deposits and any other assets easily convertible into money; 35

‘transferable securities’ means shares, warrants and debentures.”.

Amendment of section 15 of Criminal Justice (Theft and Fraud Offences) Act 2001.

**44.**—Section 15 of the Criminal Justice (Theft and Fraud Offences) Act 2001 is amended—

(a) in subsection (1), by the insertion of the following paragraph after paragraph (a): 40

“(aa) robbery,”,

and

(b) by the substitution of the following subsection for subsection (2): 45

“(2) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence the article concerned was not in his or her possession for a purpose specified in subsection (1).”.

5 45.—The Act of 1984 is amended—

Amendment of Act  
of 1984.

(a) in section 6—

(i) by the insertion of the following subsection after subsection (1):

10 “(1A) Where photographs or fingerprints and palm prints, taken pursuant to subsection (1), are lost or damaged or are otherwise imperfect, they may be taken on a second or further occasion.”,

and

15 (ii) by the substitution of the following subsection for subsection (2):

“(2) The powers conferred by subsections (1)(c), (1)(d) or (1A) shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of inspector.”,

20 and

(b) by the insertion of the following section after section 6:

“Use of  
reasonable  
force in certain  
circumstances.

6A.—(1) Without prejudice to the generality of section 6, a member of the Garda Síochána may, where—

25 (a) a person is detained under section 4, and

30 (b) he or she fails or refuses to allow his or her photograph or fingerprints and palm prints to be taken pursuant to section 6,

use such force as he or she reasonably considers to be necessary to take the photograph or fingerprints and palm prints.

35 (2) Where a member of the Garda Síochána intends to exercise a power conferred by subsection (1), he or she shall inform the person concerned of that intention.

40 (3) Such a power shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of superintendent.

45 (4) Photographs or fingerprints and palm prints taken pursuant to this section shall be taken in the presence of a member

of the Garda Síochána not below the rank of inspector.

(5) The taking of such photographs and fingerprints and palm prints shall be video-recorded.”. 5

Destruction of records.

**46.**—The Act of 1984 is amended by the substitution of the following section for section 8:

“8.—(1) Where a person (in this section referred to as ‘the requester’) has had records taken in pursuance of powers conferred by section 6 or section 6A of this Act or section 12 of the Act of 2006, he or she may request the Commissioner to have the records destroyed or their use limited. 10

(2) Such a request shall be made in writing to the Commissioner and shall—

(a) contain sufficient particulars in relation to the request to enable the records to be identified, and 15

(b) set out the reasons for the request.

(3) The Commissioner shall, as soon as may be, acknowledge receipt of the request in writing.

(4) The Commissioner shall, as soon as may be but not later than 4 weeks after receipt of the request, decide whether to grant or refuse to grant the request or whether to grant it in part and shall cause the requester to be notified in writing of the decision and the date on which it was made. 20

(5) Where the Commissioner decides to refuse the request or grant it only in part, the requester may within 8 weeks beginning on the date of the decision, appeal to the District Court against the decision. 25

(6) An appeal under subsection (5) shall—

(a) be on notice to the other party to the proceedings, 30

(b) set out reasons for the appeal, and

(c) be heard otherwise than in public.

(7) On appeal, the court may have regard in particular to—

(a) the results of analysis (if any) of the records concerned, 35

(b) any previous convictions of the requester, and

(c) whether, in all the circumstances, it would be unjust not to allow the appeal.

(8) The court may make such order as it sees fit on the appeal, including an order— 40

(a) for the destruction of the records, or

(b) an order authorising their retention for such purpose or period as it may direct.

5 (9) An appeal from a refusal or grant of an order of destruction of the District Court shall lie to a judge of the Circuit Court at the instance of the requester or the Commissioner, and the appeal shall be heard otherwise than in public.

10 (10) Where an order for the destruction of any records is made under this section, the Commissioner shall cause the requester to be notified in writing as soon as the records have been destroyed.

(11) The jurisdiction conferred on the District Court under this section shall be exercised by the judge of that Court assigned to the district court district where the requester resides.

(12) Nothing in this section shall—

15 (a) prevent or restrict the exercise of powers conferred by section 6 or 6A of this Act or section 12 of the Act of 2006, or

20 (b) pending the conclusion of proceedings under this section, prevent or restrict use of the records for the purpose of other proceedings or of a criminal investigation.

25 (13) This section does not apply to records taken in pursuance of powers conferred by section 6 or 6A of this Act or section 12 of the Act of 2006 before the commencement of this section.

(14) In this section—

‘Commissioner’ means the Commissioner of the Garda Síochána;

30 ‘records’ means a photograph (including a negative), fingerprints and palm prints taken in pursuance of the powers conferred by section 6 or 6A of this Act or section 12 of the Act of 2006 and every copy and related record thereof.”.

47.—(1) This section applies to—

Powers of detention for specified offences.

- 35 (a) murder involving the use of a firearm or an explosive,
- (b) murder to which section 3 of the Criminal Justice Act 1990 applies,
- (c) an offence under section 15 of the Act of 1925, or
- 40 (d) an offence under section 15 of the Non-Fatal Offences against the Person Act 1997 involving the use of a firearm.

(2) Where a member of the Garda Síochána arrests without warrant, whether in a Garda Síochána station or elsewhere, a person (in this section referred to as “the arrested person”) whom he or she, with reasonable cause, suspects of having committed an offence to  
45 which this section applies, the arrested person—

- (a) if not already in a Garda Síochána station, may be taken to and detained in a Garda Síochána station, or
- (b) if he or she is arrested in a Garda Síochána station, may be detained in the station,

for such a period or periods authorised by *subsection (3)* if the member of the Garda Síochána in charge of the station concerned has at the time of the arrested person's arrival at the station or his or her arrest in the station, as may be appropriate, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.

- (3) (a) The period for which a person may be detained pursuant to *subsection (2)* shall, subject to the provisions of this subsection, not exceed 6 hours from the time of his or her arrest.
- (b) A member of the Garda Síochána not below the rank of superintendent may direct that a person detained pursuant to *subsection (2)* be detained for a further period not exceeding 18 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.
- (c) A member of the Garda Síochána not below the rank of chief superintendent may direct that a person detained pursuant to a direction under *paragraph (b)* be detained for a further period not exceeding 24 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.
- (d) A direction pursuant to *paragraph (b)* or *(c)* may be given orally or in writing and, if given orally, shall be recorded in writing as soon as practicable.
- (e) Where a direction has been given pursuant to *paragraph (b)* or *(c)*, the fact that the direction was given, the date and time when it was given and the name and rank of the member of the Garda Síochána who gave it shall be recorded.
- (f) The direction or, if it was given orally, the written record of it shall be signed by the member of the Garda Síochána giving it and—
  - (i) shall state the date and time when it was given, the member's name and rank and that he or she had reasonable grounds for believing that such further detention was necessary for the proper investigation of the offence concerned, and
  - (ii) shall be attached to and form part of the custody record (within the meaning of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987)) in respect of the person concerned.
- (g) (i) A member of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or District Court for a warrant authorising the detention of a person detained pursuant to

a direction under *paragraph (c)* for a further period not exceeding 72 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

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(ii) On an application pursuant to *subparagraph (i)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 72 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.

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(h) (i) A member of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or District Court for a warrant authorising the detention of a person detained under a warrant issued pursuant to *paragraph (g)(ii)* for a further period not exceeding 48 hours, if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

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(ii) On an application pursuant to *subparagraph (i)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 48 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.

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(4) On an application pursuant to *subsection (3)* the person to whom the application relates shall be produced before the judge concerned and the judge shall hear any submissions made and consider any evidence adduced by or on behalf of the person and the member of the Garda Síochána making the application.

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(5) When issuing a warrant pursuant to *subsection (3)* the judge concerned may order that the person concerned be brought before a judge of the Circuit Court or District Court at a specified time or times during the period of detention specified in the warrant and if, upon the person's being so brought before such a judge, he or she is not satisfied that the person's detention is justified, the judge shall revoke the warrant and order the immediate release from custody of the person.

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(6) If at any time during the detention of a person pursuant to this section there are no longer reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence to which the detention relates, he or she shall, subject to *subsection (7)*, be released from custody forthwith unless he or she is charged or caused to be charged with an offence and is brought before a court as soon as may be in connection with such charge or his or her detention is authorised apart from this Act.

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(7) If at any time during the detention of a person pursuant to this section a member of the Garda Síochána, with reasonable cause, suspects that person of having committed an offence to which this section applies, other than the offence to which the detention relates and the member of the Garda Síochána then in charge of the Garda

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Síochána station has reasonable grounds for believing that the continued detention of the person is necessary for the proper investigation of that other offence, the person may continue to be detained in relation to the other offence as if that offence was the offence for which the person was originally detained. 5

(8) A person shall not be detained pursuant to this section for more than 168 hours from the time of his or her arrest, not including any period which is to be excluded under subsection (8) or (8A) of section 4 of the Act of 1984 (as applied by *section 49*) in reckoning a period of detention. 10

(9) Notwithstanding *subsections (3) and (8)*, if—

(a) an application is made under *subsection (3)* for a warrant authorising the detention for a further period of a person detained under that subsection, and

(b) the period of detention pursuant to that subsection has not expired at the commencement of the hearing of the application but would, but for this paragraph, expire during the hearing, 15

it shall be deemed not to expire until the determination of the application. 20

(10) Nothing in this section shall affect the operation of section 30 of the Offences Against the State Act 1939, section 4 of the Act of 1984 or section 2 of the Criminal Justice (Drug Trafficking) Act 1996.

Rearrest.

**48.**—(1) Where a person is detained pursuant to *section 47* and is released without any charge having been made against him or her, he or she shall not— 25

(a) be arrested again in connection with the offence to which the detention related, or

(b) be arrested for any other offence which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested suspected, or ought reasonably to have suspected, him or her of having committed, 30

except under the authority of a warrant issued by a judge of the Circuit Court or District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that further information has come to the knowledge of the Garda Síochána since the person's release as to his or her suspected participation in the offence for which his or her arrest is sought. 35

(2) When issuing a warrant under *subsection (1)*, the judge concerned may order that the person concerned be brought before a judge of the Circuit Court or District Court on arrest or at any specified time or times during the period of detention authorised by *section 47* as applied by *subsection (3)* and if, upon the person's being so brought before such a judge, he or she is not satisfied that the person's detention is justified, the judge shall revoke the warrant and order the immediate release from custody of the person. 40 45

(3) *Section 47* shall apply to a person arrested in connection with an offence to which that section relates under a warrant issued pursuant to *subsection (1)*, as it applies to a person to whom that section applies, with the following and any other necessary modifications:

5 (a) in *subsection (3)*, the substitution for *paragraphs (c) and (d)* of the following paragraphs:

10 “(c) A member of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or District Court for a warrant authorising the detention of a person detained pursuant to a direction under *paragraph (b)* for a further period not exceeding 24 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

15 (d) On an application under *paragraph (c)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 24 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.”;

and

(b) in *paragraph (g)(i) of subsection (3)*, the substitution of “under a warrant issued pursuant to *paragraph (d)*” for “pursuant to a direction under *paragraph (c)*”.

30 (4) A person arrested in connection with an offence other than one to which *section 47* relates, under a warrant issued pursuant to *subsection (1)*, shall, subject to *subsection (2)*, be dealt with under section 4 of the Act of 1984 in like manner as a person arrested without warrant to whom the said section 4 applies.

35 (5) Notwithstanding *subsection (1)*, a person to whom that subsection relates may be arrested for any offence for the purpose of charging him or her with that offence forthwith.

40 (6) Where a person who has been arrested under section 30 of the Offences Against the State Act 1939 or detained under section 4 of the Act of 1984 or section 2 of the Criminal Justice (Drug Trafficking) Act 1996 in connection with an offence is released without any charge having been made against him or her, he or she shall not be detained pursuant to *section 47*—

(a) in connection with the first-mentioned offence, or

45 (b) in connection with an offence to which *section 47* relates and which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested, suspected, or ought reasonably to have suspected, him or her of having committed.

Application of certain provisions of Act of 1984.

**49.**—Sections 4(4), 4(7), 4(8), 4(8A), 4(11), 5, 6(1) to (4), 6A, 8, 18, 19 and 19A of the Act of 1984 shall apply with any necessary modifications in relation to persons detained under *section 47* as they apply to persons detained under section 4 of that Act.

Amendment of section 5 of Criminal Justice (Drug Trafficking) Act 1996.

**50.**—Section 5 of the Criminal Justice (Drug Trafficking) Act 1996 is amended by— 5

- (a) the insertion of “4(8A),” after “4(8),” and
- (b) the substitution of “, 8, 18, 19 and 19A” for “and 8”.

Amendment of section 9 of Act of 1984.

**51.**—Section 9 of the Act of 1984 is amended by—

- (a) the insertion of “4(8A),” after “4(8),” and 10
- (b) the substitution of “, 6(3), 18, 19 and 19A” for “and 6(3)”.

## ENACTMENTS REPEALED

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 29 of 1996	Criminal Justice (Drug Trafficking) Act 1996	Section 7.
No. 39 of 1998	Offences Against the State (Amendment) Act 1998	Section 5.

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## SCHEDULE 2

Sections 24 and 25.

## OFFENCES FOR THE PURPOSES OF PART 3

*Common Law Offences*

1. Murder involving the use of a firearm or an explosive.

*Non-fatal offences against the person*

2. An offence under any of the following provisions of the Non-Fatal Offences Against the Person Act 1997:

- (a) section 4 (causing serious harm);
- (b) section 5 (threats to kill or cause serious harm);
- (c) section 15 (false imprisonment).

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*Child trafficking and pornography offences*

3. An offence under either of the following provisions of the Child Trafficking and Pornography Act 1998:

- (a) section 3 (child trafficking and taking, etc., child for sexual exploitation);
- (b) section 5 (producing, distributing, etc., child pornography).

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*Trafficking in illegal immigrants*

4. An offence under section 2 (trafficking in illegal immigrants) of the Illegal Immigrants (Trafficking) Act 2000.

*Explosives offences*

5. An offence under any of the following provisions of the Explosive Substances Act 1883:

- (a) section 2 (causing explosion likely to endanger life or damage property);
- (b) section 3 (possession, etc., of explosive substances);
- (c) section 4 (making or possessing explosives in suspicious circumstances).

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*Firearms offences*

6. An offence under section 15 (possession of firearm with intent to endanger life) of the Act of 1925.

7. An offence under any of the following provisions of the Act of 1964: 5

(a) section 26 (possession of firearms while taking vehicle without authority);

(b) section 27 (prohibition of use of firearms to assist or aid escape);

(c) section 27A (possession of firearm or ammunition in suspicious circumstances); 10

(d) section 27B (carrying firearm with criminal intent).

8. An offence under section 12A (shortening barrel of shotgun or rifle) of the Act of 1990.

*Robbery and burglary* 15

9. An offence under any of the following provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001:

(a) section 12 (burglary);

(b) section 13 (aggravated burglary);

(c) section 14 (robbery). 20

*Offences against the State*

10. Any offence under the Offences Against the State Acts 1939 to 1998.

*Drug trafficking offences*

11. A drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994. 25

*Organised crime*

12. An offence under any of the following provisions of the Act of 2006:

(a) section 71 (offence of conspiracy); 30

(b) section 72 (organised crime);

(c) section 73 (commission of offence for criminal organisation).

*Public order offences*

13. An offence under section 17 (blackmail, extortion and demanding money with menaces) of the Criminal Justice (Public Order) Act 1994. 35

*Suppression of terrorism*

14. Any offence under the Criminal Justice (Terrorist Offences) Act 2005.

*Accomplices*

5 15. References in this Schedule to an offence include references to participation as an accomplice of a person who commits the offence.

*Attempts, conspiracy and incitement*

16. An offence of attempting or conspiring to commit, or inciting the commission of, an offence specified in this Schedule.