



SEANAD ÉIREANN

AN BILL UM CHEARTAS COIRIÚIL 2007 CRIMINAL JUSTICE BILL 2007

LEASUITHE COISTE COMMITTEE AMENDMENTS

SEANAD ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL 2007 —AN CHOISTE

CRIMINAL JUSTICE BILL 2007 —COMMITTEE STAGE

*Leasuithe
Amendments*

SECTION 5

1. In page 8, before section 5, but in Part 1, to insert the following new section:

“PART 2

QUASHING OF AN ACQUITTAL

Application to
quash an acquittal.

5.—(1) The Director may apply to the Central Criminal Court for an order—

- (a) quashing a person’s acquittal for a stated offence, and
- (b) ordering that he or she shall be retried in respect of that offence.

(2) On an application under subsection (1), the court shall—

- (a) if satisfied that the requirements of sections 6* and 7** are met, make the order applied for, or
- (b) otherwise, dismiss the application.”.

—Maurice Cummins.

[* *This is the appropriate reference if amendment no. 2 is accepted.*]

[** *This is the appropriate reference if amendment no. 3 is accepted.*]

2. In page 8, before section 5, but in Part 1, to insert the following new section:

“New and
compelling
evidence.

6.—(1) The requirements of this section shall be met if there is new and compelling evidence against the acquitted person in relation to the offence of which he or she was acquitted.

(2) Evidence is new if—

- (a) it was not adduced in the proceedings in which the person was acquitted, or
- (b) in the case of an appeal, it was not adduced in the earlier proceedings to which the appeal related.

(3) Evidence is compelling if—

- (a) it is reliable,

[SECTION 5]

(b) it is substantial, and

(c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.

(4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.

(5) For the purposes of this section, it shall not be relevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.”

—Maurice Cummins.

3. In page 8, before section 5, but in Part 1, to insert the following new section:

“Interests of justice. 7.—(1) The requirements of this section are met if, in all the circumstances, it is in the interests of justice for the court to make the order under *section 5**.

(2) In determining whether the requirements of this section are met, the court shall have particular regard to—

(a) whether existing circumstances make a fair trial unlikely,

(b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed,

(c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by—

(i) the Director or his or her agent or agents,

(ii) a member An Garda Síochána,

(iii) a member of the judiciary,

(iv) an employee of the Courts Service, or

(v) any other person involved in the administration of justice,

to act with due diligence or expedition,

(d) whether, since those proceedings or, if later, since the commencement of this Part, any person referred to in paragraph (c) of this section has failed to act with due diligence or expedition.”

—Maurice Cummins.

[*This is the appropriate reference if amendment no. 1 is accepted.]

4. In page 8, before section 5, but in Part 1, to insert the following new section:

“Definitions. 8.—In this Part—

“Director” means the Director of Public Prosecutions;

“member of the judiciary” means a judge of the District, Circuit, High or Supreme Courts.”.

—Maurice Cummins.

[SECTION 5]

5. In page 8, before section 5, but in Part 1, to insert the following new section:

“PART 2

WITNESS INTIMIDATION

Providing for mechanisms by regulation.

5.—The Minister shall, by regulation under this section, make provision for identification of suspects by witnesses, victims and other persons where the suspect can be identified through a one-way screen and the identity of the witness, victim or other person can be withheld.”.

—Maurice Cummins.

6. In page 8, before section 5, but in Part 1, to insert the following new section:

“PART 2

EXCLUSIONARY RULE

Admissible evidence.

5.—(1) Where evidence is obtained in contravention of a person’s constitutional rights, whether numerated or unenumerated, such evidence may, having regard to the totality of the circumstances of the case and, in particular, the rights of the victim, be deemed by the court to be nonetheless admissible, unless—

- (a) the evidence was not obtained in good faith, and
- (b) the contravention of the person’s constitutional rights was—
 - (i) intentional, and
 - (ii) significant in the context of the offence alleged.”.

—Maurice Cummins.

7. In page 8, before section 5, but in Part 1, to insert the following new section:

“Plain sight.

6.—(1) Where, in the course of his or her duty, a member of An Garda Síochána sees or otherwise becomes aware of evidence, be it material, facts or any other thing, that—

- (a) could be used as evidence in an existing case, or
- (b) indicates to him or her that a crime has been, or is likely to be, committed,

and it is not reasonable or expedient for him or her to obtain a search warrant or other legal authority, he or she may gather such evidence in such a manner as he or she sees fit, and such evidence shall not be rendered invalid by way of the exclusionary rule.

(2) Where evidence is gathered under subsection (1), reasonable efforts must be made—

- (a) in the case of evidence found on private property, to make an occupier aware that such evidence is being gathered, and
- (b) in the case of evidence found on a person, to inform the person in question of what suspicions the member has.”.

[SECTION 5]

—Maurice Cummins.

8. In page 8, before section 5, but in Part 1, to insert the following new section:

“Definitions.

7.—In this Part—

“exclusionary rule” means the rule established in *People (DPP) v. Kenny* [1990] ILRM 569 stating that evidence obtained in violation of a person’s constitutional rights is not admissible, save in the exceptional circumstances laid out therein;

“member” has the meaning assigned to it by section 3 of the Garda Síochána Act 2005;

“occupier” has the meaning assigned to it by section 1 of the Occupiers’ Liability Act 1995.”.

—Maurice Cummins.

SECTION 9

9. In page 12, line 21, after “bail” to insert “and shall otherwise be of good behaviour”.

—Maurice Cummins.

SECTION 24

10. In page 20, before section 24, but in Part 3, to insert the following new section:

“Definitions.

24.—In this Part—

“Freedom of Information Acts” means the Freedom of Information Acts 1997 to 2003;

“law terms” refers to the four periods (to wit Michaelmas, Hilary, Easter and Trinity) of prescribed sittings for the Superior Courts, as defined in Order 118, rule 1 of the Rules of the Superior Courts;

“the Register” means the Register of Sentences established by *section 4*;

“the Service” means the body established by the Courts Service Act 1998;

“time already served” means the period of time, prior to conviction, during which the convicted person was detained in custody without bail.”.

—Maurice Cummins.

11. In page 20, before section 24, but in Part 3, to insert the following new section:

“Register of sentences.

25.—(1) On the establishment day, a comprehensive register of sentences, to be known as the Register of Sentences, or in the Irish language as an Clár Pianbhreitheanna, shall be established.

(2) The Register shall hold the following information pertaining to each and every sentence handed down in Ireland:

- (a) the case number;

[SECTION 24]

- (b) the offence;
- (c) the particulars of the offence;
- (d) any mitigating factors relied upon by the convicted person or his defence counsel;
- (e) the convicted person's previous convictions (if any);
- (f) details of what sentence was handed down, including—
 - (i) sentences where the Probation Act is applied,
 - (ii) sentences where no custodial sentence is given,
 - (iii) details of what sentence was handed down, including, where applicable, all of the following data,
 - (iv) in the case of multiple convictions, if the sentences were consecutive or concurrent,
 - (v) what non-custodial elements were given,
 - (vi) how much time had already been served by the accused (where applicable), and if that time was taken as time already served,
 - (vii) the length of time served by the accused,
 - (viii) if the non-custodial elements of the sentence (if any) were executed,
 - (ix) if early release was granted, and
 - (x) what portion of the sentence (if any) was remitted.”.

—Maurice Cummins.

12. In page 20, before section 24, but in Part 3, to insert the following new section:

“Maintenance of the Register. 26.—(1) The maintenance of the Register shall be the responsibility of the Service.

(2) The Register shall be updated as often and as regularly as is practicable but at least on a weekly basis during law terms.”.

—Maurice Cummins.

13. In page 20, before section 24, but in Part 3, to insert the following new section:

“Access to the Register. 27.—(1) The Register shall be publicly available.

(2) The following organisations, their employees, and the following persons shall have a statutory right of access to the Register:

- (a) the Service;
- (b) An Garda Síochána;
- (c) the Attorney General;

[SECTION 24]

- (d) members of the District, Central, High and Supreme Courts;
 - (e) the Probation and Welfare Service;
 - (f) the Prisons Service;
 - (g) the Department of Justice, Equality and Law Reform;
 - (h) Members of Oireachtas Éireann;
 - (i) members of the Bar Council of Ireland; and
 - (j) members of the Law Society of Ireland.
- (3) Nothing in this section shall be used to—
- (a) impede or otherwise prevent the publication of information contained in the Register, or
 - (b) prevent access to the Register under the Freedom of Information Acts.
- (4) The Courts Service shall, in terms of the Register, be subject to the terms of the Freedom of Information Acts.
- (5) The Courts Service shall put in place such measures as it deems necessary and appropriate to make the Register publicly available and such measures may include making an electronic copy of the Register publicly available.”.
- Maurice Cummins.

SECTION 25

14. In page 21, between lines 28 and 29, to insert the following subsection:

- “(2) Subject to subsection (3), where a person (other than a person under the age of 18 years)—
- (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
 - (c) who commits an offence specified in *Schedule 2* (in this section referred to as “the subsequent offence”)—
 - (i) while serving the sentence of imprisonment, or
 - (ii) during time remitted from that sentence of imprisonment,

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.”.

—Maurice Cummins.

15. In page 21, subsection (2), line 29, to delete “Subsection (1)” and substitute “Subsections (1) and (2)*”.

[SECTION 25]

—Maurice Cummins.

[* This is the appropriate reference if amendment no. 14 is accepted.]

- 16.** In page 21, subsection (2), line 30, to delete “apply” and substitute “applies”.
—Maurice Cummins.

- 17.** In page 21, subsection (3), line 36, to delete “Subsection (1)” and substitute “Subsections (1) and (2)*”.
—Maurice Cummins.

[* This is the appropriate reference if amendment no. 14 is accepted]

- 18.** In page 22, subsection (5)(a), lines 3 and 4, to delete “subsection (1)” and substitute “subsections (1) and (2)*”.
—Maurice Cummins.

[* This is the appropriate reference if amendment no. 14 is accepted]

- 19.** In page 22, subsection (6), line 10, to delete “Subsection (1)” and substitute “Subsections (1) and (2)*”.
—Maurice Cummins.

[* This is the appropriate reference if amendment no. 14 is accepted]

“Judges’ Rules and existing forms of caution.”

SECTION 32

- 20.** In page 33, before section 32, to insert the following new section:

32.—Prior to the commencement of any section in this Part, the Minister shall make such changes and amendments as are necessary to the Judges’ Rules and to the form of caution given to persons to whom this Part applies.”.

—Maurice Cummins.

SECTION 44

- 21.** In page 45, lines 16 and 17, to delete “or relating to the commission of,”.
—Maurice Cummins.

SECTION 48

- 22.** In page 51, line 24, to delete “and”.
—Maurice Cummins.

- 23.** In page 52, between lines 18 and 19, to insert the following:

“(c) in section 15, by substituting “€5,000” for “£1,000”, and

(d) in section 16, by substituting “€3,000” for “£1,000”.”.

—Maurice Cummins.

SECTION 49

- 24.** In page 52, before section 49, to insert the following new section:

[SECTION 49]

“Amendments of section 19 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

49.—Section 19 of the Criminal Justice (Theft and Fraud Offences) Act is amended in subsection (2) by the substitution of “€3,000” for “£1,500”.”.

—Maurice Cummins.

“Revision of Judges’ Rules.

SECTION 51

25. In page 57, before section 51, to insert the following new section:

51.—(1) The Minister shall, within 6 months of the passing of this Act, instigate a formal revision of the Judges’ Rules taking account particularly of the inference-drawing provisions contained in section 7 of the Criminal Law (Drug Trafficking) Act 1996 and sections 2 and 5 of the Offences against the State (Amendment) Act 1998.

(2) A review under *subsection (1)* shall take place over a period of not more than 12 months.”.

—Maurice Cummins.

“Repeal of Judges’ Rules applying to interviews.

51.—The Minister may, if he or she deems it necessary and expedient, repeal the Judges’ Rules insofar as they apply to the conduct of interviews, in order to substitute ministerial regulations for them.”.

—Maurice Cummins.

SECTION 55

27. In page 59, before section 55, to insert the following new section:

“Amendment of section 6 of the Juries Act 1976.

55.—The Juries Act 1976 is hereby amended—

(a) in section 6 by the substitution of the following for section 6:

“Qualification and liability for jury service.

6.—Subject to the provisions of this Act, every citizen, aged eighteen years or upwards who is resident in a jury district, shall be qualified and liable to serve as a juror for the trial of all or any issues which are for the time being triable with a jury drawn from that jury district, unless he is for the time being ineligible or disqualified for jury service.”,

and

(b) in Part II of the First Schedule, by the deletion of the words “and under the age of seventy years” at the end of that part.”.

—Maurice Cummins.

SCHEDULE 1

28. In page 62, after line 42, to insert the following:

“

No. 26 of 2006	Criminal Justice Act 2006	Section 62
----------------	---------------------------	------------

”.
—Maurice Cummins.