



DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (FAIREACHAS) 2009 CRIMINAL JUSTICE (SURVEILLANCE) BILL 2009

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (FAIREACHAS) 2009 —ROGHCHOISTE

CRIMINAL JUSTICE (SURVEILLANCE) BILL 2009 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 1

1. In page 4, line 29, after “of” to insert “chief”.

—Charles Flanagan.

2. In page 5, line 1, after “devices” to insert the following:

“and includes any entry upon or interference with private property for the purpose of installing or operating surveillance devices”.

—Pat Rabbitte.

3. In page 5, between lines 1 and 2, to insert the following:

“(c) the targeted and repeated photographing of persons for the purposes of monitoring or recording the movements, activities and communications of such persons.”.

—Charles Flanagan.

SECTION 2

4. In page 5, between lines 22 and 23, to insert the following subsection:

“(3) For the avoidance of doubt, it is hereby declared that this Act does not apply to the following:

- (a) the use of a closed circuit television system in a Garda Síochána station;
- (b) the recording by electronic or other similar means under section 27 of the Criminal Justice Act 1984 of the questioning of a person by members of the Garda Síochána at Garda Síochána stations or elsewhere in connection with the investigation of offences;
- (c) the recording by electronic or other similar means of any evidence given, or statement made, by a person for the purposes of any court proceedings.”.

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

SECTION 5

5. In page 6, subsection (1), line 32, to delete “may” and substitute “shall”.

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

6. In page 6, subsection (4), line 49, after “by” to insert “legal professional”.

—Charles Flanagan.

[SECTION 5]

7. In page 7, subsection (7), line 18, to delete “or withdrawing” and substitute “and withdrawing”.

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

8. In page 7, subsection (7), line 20, after “place” to insert the following:

“and may authorise interference with private property for the purpose of installing or operating such surveillance device without the consent of the owner of such property”.

—Pat Rabbitte.

SECTION 6

9. In page 7, between lines 34 and 35, to insert the following subsection:

“(3) Where an application for a renewal under this section has been made and the authorisation concerned would, but for this subsection, expire during the hearing of the application, it shall be deemed not to expire until the determination of the application.”.

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

SECTION 7

10. In page 8, subsection (5), line 24, to delete “or withdrawing” and substitute “and withdrawing”.

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

11. In page 9, lines 1 to 6, to delete subsection (10) and substitute the following:

“(10) (a) If the superior officer who approved the carrying out of surveillance believes on reasonable grounds that surveillance beyond the period of 72 hours is warranted, he or she shall, as soon as possible but in any case before the expiry of that period, make an application under *section 4(4)* for an authorisation to continue the surveillance.

(b) Where an application under *section 4(4)* has been made and the period referred to in *paragraph (a)* would, but for this paragraph, expire during the hearing of the application, it shall be deemed not to expire until the determination of the application.”.

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

SECTION 8

12. In page 9, subsection (1), line 29, to delete “superior officer” and substitute “Judge of the District Court”.

—Charles Flanagan.

13. In page 9, subsection (2), line 32, to delete “superior officer” and substitute “Judge of the District Court”.

—Charles Flanagan.

14. In page 9, subsection (3), line 45, to delete “superior officer” and substitute “Judge of the District Court”.

—Charles Flanagan.

15. In page 10, subsection (5), line 7, after “placed” to insert the following:

[SECTION 8]

“and may authorise interference with private property for the purpose of installing or operating such tracking device without the consent of the owner of such property”.

—Pat Rabbitte.

- 16.** In page 10, subsection (6), lines 8 and 9, to delete all words from and including “A Superior” in line 8 down to and including “section” in line 9 and substitute the following:

“When an approval under this section is granted, a superior officer of the member or officer referred to in subsection (1)”.

—Charles Flanagan.

SECTION 9

- 17.** In page 11, subsection (3), line 25, to delete “information and”.

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

- 18.** In page 11, between lines 33 and 34, to insert the following subsections:

“(4) Subject to *subsection (5)*, the documents referred to in *subsections (1) to (3)* shall be destroyed as soon as practicable after they are no longer required to be retained under those subsections.

(5) The Minister may authorise in writing the retention of any of the documents referred to in this section where he or she considers it necessary to do so having regard to—

- (a) the interests of the protection of the privacy and other rights of persons,
- (b) the security of the State,
- (c) the aims of preventing the commission of, and detecting, arrestable offences, and
- (d) the interests of justice.”.

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

SECTION 11

- 19.** In page 13, subsection (10), lines 25 and 26, to delete “application” and substitute “investigation”.

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

- 20.** In page 13, between lines 29 and 30, to insert the following subsection:

“(11) The Referee may, on his or her own initiative, also investigate whether there has been a relevant contravention and this section (other than *subsection (7)*) shall apply to such an investigation as if the references to “the applicant” in *subsections (4) and (6)* were to “the person who was the subject of the authorisation or approval.”.”.

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

SECTION 14

- 21.** In page 15, subsection (1), line 23, to delete “Evidence” and substitute “Material”.

—Pat Rabbitte.

[SECTION 14]

22. In page 15, subsection (1), line 25, to delete “is admissible” and substitute “may be admitted as evidence”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
23. In page 15, subsection (3)(a), line 35, after “concerned,” to insert the following:
“or carried out on foot of a purported authorisation or approval the validity of which has been tainted by an error or omission”.
—Pat Rabbitte.
24. In page 15, subsection (3)(b), between lines 41 and 42, to insert the following:
“(i) the rights of the community and of the victim (if any) of the crime being investigated;”.
—Pat Rabbitte.
25. In page 16, subsection (4)(b), between lines 20 and 21, to insert the following:
“(i) the rights of the community and of the victim (if any) of the crime being investigated;”.
—Pat Rabbitte.
26. In page 16, between lines 29 and 30, to insert the following subsection:
“(5) It shall be presumed, until the contrary is shown, that a surveillance device or tracking device used by a member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners for the purposes referred to in this Act is a device capable of producing accurate information or material without the necessity of proving that the surveillance device or tracking device was in good working order.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 15

27. In page 17, subsection (4), line 19, to delete “ “terror-linked activity” ” and substitute “ “terrorist-linked activity” ”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 17

Section opposed.

—Pat Rabbitte.

Section opposed.

—Charles Flanagan.