



DÁIL ÉIREANN

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

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (FAIREACHAS) 2009 —AN TUARASCÁIL

CRIMINAL JUSTICE (SURVEILLANCE) BILL 2009 —REPORT

Leasuithe Amendments

1. In page 3, between lines 15 and 16, to insert the following:

“Act of 1993” means the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;”.

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

2. In page 4, after line 39, to insert the following:

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

—Aengus Ó Snodaigh.

3. In page 4, after line 39, to insert the following:

“or

(c) using officers or informants to monitor and/or record the movements activities and communications of a subject in a targeted, ongoing and repeated way;”.

—Aengus Ó Snodaigh.

4. In page 5, line 1, after “devices” to insert “including tracking devices”.

—Aengus Ó Snodaigh.

5. In page 5, line 12, after “access” to insert the following:

“and except where a camera is used for the targeted, ongoing and repeated photographing of persons for the purposes of monitoring and/or recording the movements, activities and communications of such persons”.

—Aengus Ó Snodaigh.

6. In page 5, line 19, after “Síochána,” to insert the following:

“officers of an Garda Síochána Ombudsman Commission;”.

—Aengus Ó Snodaigh.

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

“(3) An authorisation or approval under this Act may not be issued or granted in respect of an activity that would constitute an interception within the meaning of the Act of 1993.”.

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

8. In page 5, line 35, after “Síochána,” to insert the following:

“an officer of an Garda Síochána Ombudsman Commission,”.

—Aengus Ó Snodaigh.

9. In page 5, line 37, after “surveillance” to insert “, including by means of a tracking device,”.

—Aengus Ó Snodaigh.

10. In page 6, to delete lines 8 and 9.

—Aengus Ó Snodaigh.

11. In page 6, between lines 9 and 10, to insert the following:

“(2) An officer of the Garda Síochána Ombudsman Commission may apply to a judge for an authorization where he or she has reasonable grounds for believing that

(a) as part of an operation or investigation being conducted by an Garda Síochána Ombudsman Commission concerning an arrestable offence, the surveillance being sought to be authorised is necessary for the purposes of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purposes of proceedings in relation to the offence, or

(b) the surveillance being sought to be authorised is necessary for the purpose of preventing the commission of arrestable offences.”.

—Aengus Ó Snodaigh.

12. In page 6, to delete lines 44 and 45 and substitute the following:

“5.—(1) An application under *section 4* for an authorisation and under *section 6* for a variation or renewal of an authorisation—

(a) shall be made *ex parte* and shall be heard otherwise than in public, and

(b) may be made to a judge assigned to any district court district.”.

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

13. In page 7, line 34, 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.

14. In page 7, between lines 37 and 38, to insert the following:

“(9) Subject to any conditions imposed by the judge under *subsection (5)*, an authorisation shall have effect both within the district court district to which the judge is assigned and in any other part of the State.”.

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

15. In page 8, between lines 3 and 4, to insert the following:

“(3) The information on oath supporting the application shall include a copy of the written record of approval concerned, a summary of the results of the surveillance carried out and the reasons why varied or continued surveillance is required.”.

—Aengus Ó Snodaigh.

16. In page 8, to delete lines 27 and 28.
—Aengus Ó Snodaigh.
17. In page 8, after line 49, to insert the following:
“(a) the grounds on which approval was granted,
(b) the less intrusive or other means considered and determined insufficient,
(c) the efforts made to secure an emergency judicial hearing.”.
—Aengus Ó Snodaigh.
18. In page 9, line 17, after “hours” to insert the following:
“, he or she will then produce a written record of the variation and the reasons for same”.
—Aengus Ó Snodaigh.
19. In page 9, line 45, to delete “Secretary.” and substitute the following:
“Secretary and
(d) in all cases, the Designated Judge.”.
—Aengus Ó Snodaigh.
20. In page 9, to delete lines 46 and 47, in page 10 to delete lines 1 to 49 and in page 11, to delete lines 1 to 29.
—Aengus Ó Snodaigh.
21. In page 10, line 1, to delete “4” and substitute “3”.
—Aengus Ó Snodaigh.
22. In page 10, line 12, after “paragraphs” to insert “ (a),”.
—Aengus Ó Snodaigh.
23. In page 10, line 32, after “placed” to insert the following:
“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.
24. In page 10, between lines 38 and 39, to insert the following:
“(a) the grounds on which approval was granted,
(b) the less intrusive or other means considered and determined insufficient.”.
—Aengus Ó Snodaigh.
25. In page 11, line 4, after “approval” to insert the following:
“, (he or she will then produce a written record of the variation and the reasons for same)”.
—Aengus Ó Snodaigh.
26. In page 11, line 22, to delete “Secretary.” and substitute the following:
“Secretary and
(d) in all cases, the Designated Judge.”.
—Aengus Ó Snodaigh.

27. In page 11, line 26, to delete “4” and substitute “3”.
—Aengus Ó Snodaigh.

28. In page 11, between lines 29 and 30, to insert the following:

“(12) All regulations made pursuant to *subsection (11)* shall require the prior approval of the Dáil.”.

—Aengus Ó Snodaigh.

29. In page 11, line 36, after “prosecution” to insert the following:

“, Garda Síochána Ombudsman investigation, civil case”.

—Aengus Ó Snodaigh.

30. In page 12, line 12, after “The” to insert “relevant”.

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

31. In page 12, line 28, to delete “may make regulations” and substitute the following:

“shall make regulations and these will require the prior approval of the Dáil”.

—Aengus Ó Snodaigh.

32. In page 12, between lines 39 and 40, to insert the following:

“(3) Notwithstanding *section 13*, the Minister may make regulations respecting the disclosure or non-disclosure, to the person who was its subject or other persons whose interests are materially affected by it, of the existence of an authorisation or an approval under *section 7* or *8*, provided that any disclosure authorised by such regulations is—

- (a) consistent with the purposes for which the authorisation or approval concerned was issued or granted,
- (b) consistent with the security of the State, the protection of persons’ privacy and other rights and the aims of preventing and detecting the commission of arrestable offences, and
- (c) unlikely to hinder the investigation in the future of such offences.

(4) Any regulation made under *subsection (3)* may—

- (a) require consultation by the Minister, in any particular case of disclosure, with such classes of persons as may be prescribed,
- (b) prescribe categories of persons (other than the subjects of the authorisations or approvals) whose interests are materially affected by authorisations or approvals, to whom disclosure is to be made, and
- (c) permit the imposition of terms and conditions limiting the extent or detail of disclosure as necessary, having regard to the matters referred to in *subsection (3)*.”.

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

33. In page 13, line 11, to delete “applicant” and substitute the following:

“applicant, and any other person whose interests are materially affected by the relevant contravention,”.

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

34. In page 13, to delete lines 28 to 37 and substitute the following:

“(6) In the circumstances referred to in *subsection (4)*, the referee shall

(a) report the matter and any recommendation under *subsection 5(b)* to—

(i) an Garda Síochána Ombudsman Commission, in the case of a contravention by an Garda Síochána,

(ii) the Ombudsman for Defence Forces, in the case of a contravention by the Defence Forces,

(iii) the Office of the Ombudsman, in the case of a contravention by the Revenue Commissioners, and

(b) report the matter and any recommendation under *subsection 5(b)* to the judge designated under *section 12*.”.

—Aengus Ó Snodaigh.

35. In page 13, to delete line 40 and substitute the following:

“(a) notify, under *subsection (4)(a)*, the applicant or the other person, if any, of a conclusion”.

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

36. In page 14, line 8, to delete “is final” and substitute “may be appealed to the District Court”.

—Aengus Ó Snodaigh.

37. In page 14, lines 20 to 21, to delete “The Referee may, on his or her own initiative, also investigate” and substitute the following:

“(11) The Referee—

(a) may, on his or her own initiative, and

(b) shall, where a case has been referred to him or her by the designated judge under *section 12(8)**,

investigate”.

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

[* *This is the correct reference if amendment number 47 is accepted.*]

38. In page 14, lines 27 and 28, to delete all words from and including “Interception” in line 27 down to and including “1993;” in line 28 and substitute “Act of 1993;”.

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

39. In page 14, line 30, to delete “8” and substitute “9”.

—Aengus Ó Snodaigh.

40. In page 14, line 39, to delete “8” and substitute “9”.

—Aengus Ó Snodaigh.

41. In page 14, between lines 43 and 44, to insert the following:

“(4) Reports under *subsection(3)(b)* shall include the following:

(i) the steps taken to keep the operation of the Act under review;

(ii) the number of individual files reviewed;

- (iii) the volume of surveillance carried out;
 - (iv) whether mistakes were made in the carrying out of surveillance (such as the targeting of the wrong individual), the number and nature of these mistakes;
 - (v) the findings of an evaluation test measuring compliance with European Convention on Human Rights standards; and
 - (vi) any recommendations for legislative or practice changes that the designated judge considers necessary to safeguard against mistake and ensure full compliance in practice with ECHR standards.”
- Aengus Ó Snodaigh.

42. In page 14, after line 47, to insert the following:

“(5) A person who believes that he or she might be the subject of an authorization under *section 5* or *6* and who believes there has been a relevant contravention may apply to the designated judge for an investigation into the matter.”

—Aengus Ó Snodaigh.

43. In page 14, after line 47, to insert the following:

“(5) In the event that an investigation under *subsection (4)* reveals that an individual has been the subject of surveillance in contravention of the legislation the designated judge shall, through an appropriate mechanism, inform the individual concerned so that they can exercise any further causes of action or remedies available to them.”

—Aengus Ó Snodaigh.

44. In page 14, after line 47, to insert the following:

“(5) In order to further facilitate the performance of the designated judge’s functions the complaints referee, an Garda Síochána, an Garda Síochána Ombudsman Commission, the Defence Forces and the Revenue Commissioners shall furnish information to him or her on a regular basis in relation to the operation of their surveillance powers.”

—Aengus Ó Snodaigh.

45. In page 15, line 11, to delete “6” and substitute “2”.

—Aengus Ó Snodaigh.

46. In page 15, line 16, to delete “the security of the State” and substitute “current or future criminal prosecutions”.

—Aengus Ó Snodaigh.

47. In page 15, between lines 17 and 18, to insert the following:

“(8) Where the designated judge investigates a case under *subsection (4)* and is of the opinion that it is in the interests of justice to do so, he or she may refer that case to the Referee for an investigation under *section 11(11)*.”

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

48. In page 15, line 21, after “8,” to insert the following:

“including any information or documents obtained as a result of such surveillance.”

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

49. In page 15, to delete line 29.

—Aengus Ó Snodaigh.

- 50.** In page 16, to delete lines 1 and 2 and substitute the following:
 ““authorised person” means—
- (a) a person referred to in section 62(4)(a) of the Garda Síochána Act 2005,
 - (b) the Minister for Defence,
 - (c) the Minister for Finance, and
 - (d) a person the disclosure to whom is—
 - (i) authorised by the Commissioner of the Garda Síochána, the Chief of Staff of the Defence Forces or a Revenue Commissioner, or
 - (ii) otherwise authorised by law;”.
- An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
- 51.** In page 16, line 16, to delete “Evidence” and substitute “Information or documents”.
- Pat Rabbitte.
- 52.** In page 16, lines 26 and 27, to delete “are admissible” and substitute “may be admitted as evidence”.
- An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
- 53.** In page 16, between lines 35 and 36, to insert the following:
- “(i) the rights of the community and of the victim (if any) of the crime being investigated;”.
- Pat Rabbitte.
- 54.** In page 17, lines 3 and 4, to delete “are admissible” and substitute “may be admitted as evidence”.
- An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
- 55.** In page 17, between lines 15 and 16, to insert the following:
- “(i) the rights of the community and of the victim (if any) of the crime being investigated;”.
- Pat Rabbitte.
- 56.** In page 18, to delete line 4.
- Aengus Ó Snodaigh.
- 57.** In page 18, lines 30 to 36, to delete all words from and including “be” in line 30 down to and including “thereunder.” in line 36 and substitute the following:
- “require the prior approval of the relevant Oireachtas Committee.”.
- Aengus Ó Snodaigh.
- 58.** In page 18, to delete lines 37 to 43 and in page 19, to delete lines 1 and 2.
- Pat Rabbitte, Aengus Ó Snodaigh.