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

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*Mar a tionscnaíodh*  
*As initiated*

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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
  2. Application of Act.
  3. Surveillance.
  4. Application for authorisation.
  5. Authorisation.
  6. Variation or renewal of authorisation.
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ACTS REFERRED TO

Courts (Supplemental Provisions) Act 1961	1961, No. 39
Criminal Justice (Terrorist Offences) Act 2005	2005, No. 2
Criminal Justice Act 2006	2006, No. 26
Criminal Law Act 1997	1997, No. 14
Customs Consolidation Act 1876	39 & 40, Vict. Ch. 36
Defence (Amendment) Act 1979	1979, No. 1
Defence (Amendment) Act 1990	1990, No. 6
Defence Act 1954	1954, No. 18
Finance Act 1999	1999, No. 2
Finance Act 2001	2001, No. 7
Finance Act 2003	2003, No. 3
Finance Act 2005	2005, No. 5
Garda Síochána Act 2005	2005, No. 20
Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993	1993, No. 10
Postal and Telecommunications Services Act 1983	1983, No. 24
Taxes Consolidation Act 1997	1997, No. 39



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

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# BILL

*entitled*

5 AN ACT TO PROVIDE FOR SURVEILLANCE IN CONNEC-  
TION WITH THE INVESTIGATION OF ARRESTABLE  
OFFENCES, THE PREVENTION OF SUSPECTED  
ARRESTABLE OFFENCES AND THE SAFEGUARDING  
10 OF THE STATE AGAINST SUBVERSIVE AND TERROR-  
IST THREATS, TO AMEND THE GARDA SÍOCHÁNA  
ACT 2005 AND THE COURTS (SUPPLEMENTAL  
PROVISIONS) ACT 1961 AND TO PROVIDE FOR  
MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15 1.—In this Act—

Interpretation.

“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;

20 “authorisation” means an authorisation for the carrying out of surveillance issued under *section 5* or varied or renewed under *section 6*;

“document” includes—

(a) any book, record or other written or printed material in any form, and

25 (b) any recording, including any data or information stored, maintained or preserved electronically or otherwise than in legible form;

“judge” means a judge of the District Court;

30 “member of the Defence Forces” means a member of the Defence Forces within the meaning of section 1 of the Defence (Amendment) Act 1990, other than a member of the Reserve Defence Force within the meaning of the Defence Act 1954;

35 “member of the Garda Síochána” means a member of the Garda Síochána within the meaning of section 3 of the Garda Síochána Act 2005, other than a person referred to in paragraph (b) of that definition;

“Minister” means the Minister for Justice, Equality and Law Reform;

“place” includes—

- (a) a dwelling or other building,
- (b) a vehicle, whether mechanically propelled or not,
- (c) a vessel, whether sea-going or not, 5
- (d) an aircraft, whether capable of operation or not, and
- (e) a hovercraft;

“relevant Minister” means—

- (a) the Minister, in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Garda Síochána, 10
- (b) the Minister for Defence, in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Defence Forces, and
- (c) the Minister for Finance, in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Revenue Commissioners; 15

“revenue offence” means an offence under any of the following provisions that is an arrestable offence:

- (a) section 186 of the Customs Consolidation Act 1876; 20
- (b) section 1078 of the Taxes Consolidation Act 1997;
- (c) section 102 of the Finance Act 1999;
- (d) section 119 of the Finance Act 2001;
- (e) section 79 (inserted by section 62 of the Finance Act 2005) of the Finance Act 2003; 25
- (f) section 78 of the Finance Act 2005;

“superior officer” means—

- (a) in the case of the Garda Síochána, a member of the Garda Síochána not below the rank of superintendent;
- (b) in the case of the Defence Forces, a member of the Defence Forces not below the rank of colonel; and 30
- (c) in the case of the Revenue Commissioners, an officer of the Revenue Commissioners not below the rank of principal officer;

“surveillance” means— 35

- (a) monitoring, observing, listening to or making a recording of a particular person or group of persons or their movements, activities and communications, or
- (b) monitoring or making a recording of places or things,

by or with the assistance of surveillance devices;

“surveillance device” means an apparatus designed or adapted for use in surveillance, but does not include—

- 5 (a) an apparatus designed to enhance visual acuity or night vision, to the extent to which it is not used to make a recording of any person who, or any place or thing that, is being monitored or observed,
- (b) a CCTV within the meaning of section 38 of the Garda Síochána Act 2005, or
- 10 (c) a camera, to the extent to which it is used to take photographs of any person who, or any thing that, is in a place to which the public have access;

15 “tracking device” means a surveillance device that is used only for the purpose of providing information regarding the location of a person, vehicle or thing;

“written record of approval” means a written record of approval prepared by a superior officer under *section 7(6) or 8(6)*.

20 **2.—**(1) This Act applies to surveillance carried out by members of the Garda Síochána, members of the Defence Forces and officers of the Revenue Commissioners. Application of Act.

(2) Nothing in this Act shall render unlawful any activity that would otherwise be lawful.

25 **3.—**A member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners shall carry out surveillance only in accordance with a valid authorisation or an approval granted in accordance with *section 7 or 8*. Surveillance.

**4.—**(1) A superior officer of the Garda Síochána may apply to a judge for an authorisation where he or she has reasonable grounds for believing that— Application for authorisation.

- 30 (a) as part of an operation or investigation being conducted by the Garda Síochána 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,
- 35 (b) the surveillance being sought to be authorised is necessary for the purpose of preventing the commission of arrestable offences, or
- 40 (c) the surveillance being sought to be authorised is necessary for the purpose of maintaining the security of the State.

45 (2) A superior officer of the Defence Forces may apply to a judge for an authorisation where he or she has reasonable grounds for believing that the surveillance being sought to be authorised is necessary for the purpose of maintaining the security of the State.

(3) A superior officer of the Revenue Commissioners may apply to a judge for an authorisation where he or she has reasonable grounds for believing that—

(a) as part of an operation or investigation being conducted by the Revenue Commissioners concerning a revenue offence, the surveillance being sought to be authorised is necessary for the purpose 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 purpose 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 revenue offences.

(4) In a case in which surveillance carried out under *section 7* is sought under *subsection (10)* of that section to be continued by application under this section, 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 continued surveillance is required.

(5) A superior officer who makes an application under *subsection (1), (2), (3) or (4)* shall also have reasonable grounds for believing that the surveillance being sought to be authorised is—

(a) the least intrusive means available, having regard to its objectives and other relevant considerations,

(b) proportionate to its objectives, having regard to all the circumstances including its likely impact on the rights of any person, and

(c) of a duration that is reasonably required to achieve its objectives.

Authorisation.

**5.—(1)** An application under *section 4* or *6* for an authorisation may be made *ex parte* and shall be heard otherwise than in public.

(2) Subject to *subsection (4)*, the judge shall issue such authorisation as he or she considers reasonable, if satisfied by information on oath of the superior officer concerned that—

(a) the requirements specified in *subsection (1), (2) or (3)*, as the case may be, of *section 4* are fulfilled, and

(b) to do so is justified, having regard to the matters referred to in *section 4(5)* and all other relevant circumstances.

(3) An information on oath of a superior officer specifying the grounds for his or her belief that the surveillance is necessary for the purpose of preventing the commission of arrestable offences referred to in *section 4(1)(b)*, or the commission of revenue offences referred to in *section 4(3)(b)*, need not specify a particular arrestable offence or a particular revenue offence, as the case may be, in respect of which the authorisation is being sought.

(4) The judge shall not issue an authorisation if he or she is satisfied that the surveillance being sought to be authorised is likely to relate primarily to communications protected by privilege.

(5) An authorisation may impose such conditions in respect of the surveillance authorised as the judge considers appropriate.

(6) An authorisation shall be in writing and shall specify—

5 (a) particulars of the surveillance device that is authorised to be used,

(b) the person who, or the place or thing that, is to be the subject of the surveillance,

(c) the name of the superior officer to whom it is issued,

10 (d) the conditions (if any) subject to which the authorisation is issued, and

(e) the date of expiry of the authorisation.

15 (7) An authorisation may authorise the superior officer named in it, or any member of the Garda Síochána, any member of the Defence Forces or any officer of the Revenue Commissioners designated by that superior officer, accompanied by any other person whom he or she considers necessary, to enter, if necessary by the use of reasonable force, any place for the purposes of initiating or carrying out the authorised surveillance, or withdrawing the authorised surveillance device, without the consent of a person who owns or is  
20 in charge of the place.

(8) An authorisation shall expire on the day fixed by the judge that he or she considers reasonable in the circumstances and that is not later than 3 months from the day on which it is issued.

25 6.—(1) A judge may, on application in that behalf by the superior officer to whom an authorisation was issued, if satisfied by information on oath of that superior officer justifying the variation or renewal of the authorisation—

Variation or renewal of authorisation.

(a) vary the authorisation, or

30 (b) renew the authorisation, on the same or different conditions, for such further period, not exceeding 3 months, as the judge considers appropriate.

(2) An application for a renewal under this section shall be made before the authorisation concerned, or any previous renewal of that authorisation, as the case may be, has expired.

35 7.—(1) A member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners may carry out surveillance without an authorisation if the surveillance has been approved by a superior officer in accordance with this section.

Approval for surveillance in cases of urgency.

40 (2) A member or officer referred to in *subsection (1)* may apply to a superior officer for the grant of an approval to carry out surveillance if he or she believes on reasonable grounds that the requirements of *subsection (1), (2) or (3)*, as the case may be, of *section 4* are fulfilled and that the surveillance is justified having regard to the matters referred to in *section 4(5)*, but that, before an authorisation  
45 could be issued—

- (a) it is likely that a person would abscond for the purpose of avoiding justice, obstruct the course of justice or commit an arrestable offence or a revenue offence, as the case may be,
- (b) information or evidence in relation to the commission of an arrestable offence or a revenue offence, as the case may be, is likely to be destroyed, lost or otherwise become unavailable, or 5
- (c) the security of the State would be likely to be compromised. 10
- (3) A superior officer to whom an application under *subsection (2)* is made shall approve the carrying out of such surveillance as he or she considers appropriate, having regard to the information in the application, if he or she is satisfied that there are reasonable grounds for believing that an authorisation would be issued under *section 5* but that one or more of the conditions of urgency specified in *subsection (2)* apply. 15
- (4) An approval may be granted subject to conditions, including as to the duration of the surveillance.
- (5) An approval under this section permits the member or officer concerned, accompanied by any other person whom he or she considers necessary, to enter, if necessary by the use of reasonable force, any place for the purposes of initiating or carrying out the approved surveillance, or withdrawing the approved surveillance device, without the consent of a person who owns or is in charge of the place. 20  
25
- (6) A superior officer who approves the carrying out of surveillance under this section shall, as soon as practicable and, in any case, not later than 8 hours after the surveillance has been approved, prepare a written record of approval of that surveillance.
- (7) A written record of approval shall be in such form as the relevant Minister may prescribe by regulations and shall include— 30
- (a) particulars of the surveillance device that is approved to be used,
- (b) the person who, or the place or thing that, is to be the subject of the surveillance, 35
- (c) the name of the member of the Garda Síochána, member of the Defence Forces or officer of the Revenue Commissioners to whom the approval is granted,
- (d) the conditions (if any) subject to which the approval is granted, 40
- (e) the time at which the approval is granted, and
- (f) the duration of the approved surveillance.
- (8) The member or officer shall not carry out surveillance under this section for a period of more than 72 hours from the time at which the approval is granted. 45
- (9) The superior officer who approved the carrying out of surveillance may vary that approval, or any condition attached to it, at any time before the expiry of the period of 72 hours.



5 (10) 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.

10 (11) A superior officer who approves the carrying out of surveillance under this section shall make a report as soon as possible and, in any case, not later than 7 days after the surveillance concerned has been completed, specifying the grounds on which the approval was granted, and including a copy of the written record of approval and a summary of the results of the surveillance.

(12) A report under *subsection (11)* shall be made to—

15 (a) in the case of a member of the Garda Síochána, a member of the Garda Síochána of the rank of Assistant Commissioner,

20 (b) in the case of an officer of the Defence Forces, a general officer within the meaning of section 2 (as amended by section 2(b) of the Defence (Amendment) Act 1979) of the Defence Act 1954, and

(c) in the case of an officer of the Revenue Commissioners, an officer of the Revenue Commissioners of the rank of Assistant Secretary.

25 **8.—(1)** Notwithstanding *sections 4* to *7*, a member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners may, for a period of not more than 4 months or such shorter period as the Minister may prescribe by regulations, monitor the movements of persons, vehicles or things using a tracking device if that use has been approved by a superior officer in accordance with this section. Tracking devices.

(2) A member or officer referred to in *subsection (1)* may apply to a superior officer for the grant of an approval to use a tracking device if he or she believes on reasonable grounds that—

35 (a) the requirements of *subsection (1), (2) or (3)*, as the case may be, of *section 4* are fulfilled and that surveillance is justified having regard to the matters referred to in *paragraphs (b) and (c) of section 4(5)*, but that the use of a tracking device would be sufficient for obtaining the information or evidence in the circumstances concerned, and

40 (b) the information or evidence sought could reasonably be obtained by the use of a tracking device for a specified period that is as short as is practicable to allow the information or evidence to be obtained.

45 (3) A superior officer to whom an application under *subsection (2)* is made shall approve such use of a tracking device as he or she considers appropriate, having regard to the information in the application, if he or she is satisfied that there are reasonable grounds for believing that an authorisation would be issued under *section 5* and that the conditions specified in *subsection (2)* apply.

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(4) An approval may be granted subject to conditions, including as to the duration of the use of the tracking device.

(5) An approval under this section permits the member or officer concerned, accompanied by any other person whom he or she considers necessary, to place the tracking device and remove it at the end of its use, without the consent of a person who owns or is in charge of the vehicle or thing on which it is placed. 5

(6) A superior officer who approves the use of a tracking device under this section shall, as soon as practicable and, in any case, not later than 8 hours after the use has been approved, prepare a written record of approval of the use of the tracking device. 10

(7) A written record of approval shall be in such form as the relevant Minister may prescribe by regulations and shall include—

(a) particulars of the tracking device that is approved to be used, 15

(b) the person who, or the vehicle or thing that, is to be monitored,

(c) the name of the member of the Garda Síochána, member of the Defence Forces or officer of the Revenue Commissioners to whom the approval is granted, 20

(d) the conditions (if any) subject to which the approval is granted,

(e) the time at which the approval is granted, and

(f) the duration of the use approved.

(8) Without prejudice to the maximum period for which an approval granted under this section may have effect, the superior officer who approves the use of a tracking device under this section may vary that approval, or any condition attached to it, at any time before the expiry of that approval. 25

(9) A superior officer who approves the use of a tracking device under this section shall make a report as soon as possible and, in any case, not later than 7 days after its use has ended, specifying the grounds on which the approval was granted, and including a copy of the written record of approval and a summary of the results of the monitoring. 30 35

(10) A report under *subsection (9)* shall be made to—

(a) in the case of a member of the Garda Síochána, a member of the Garda Síochána of the rank of Assistant Commissioner,

(b) in the case of an officer of the Defence Forces, a general officer within the meaning of section 2 (as amended by section 2(b) of the Defence (Amendment) Act 1979) of the Defence Act 1954, and 40

(c) in the case of an officer of the Revenue Commissioners, an officer of the Revenue Commissioners of the rank of Assistant Secretary. 45

5 (11) The Minister may, in the interests of the protection of the privacy and other rights of persons, the security of the State, and the aims of preventing the commission of, and detecting, arrestable offences, make regulations prescribing a period of less than 4 months as the maximum period for which approvals granted under this section may have effect, and such regulations may prescribe different periods in respect of different purposes or circumstances.

10 **9.—(1)** An application for an authorisation under *section 4* or *6*, and any documents supporting the application, shall be retained until—

Retention of materials relating to applications and reports.

(a) the day that is 3 years after the day on which the authorisation concerned ceases to be in force, or

(b) the day on which they are no longer required for any prosecution or appeal to which they are relevant,

15 whichever is later.

(2) A written record of approval prepared under *section 7(6)* or *8(6)*, and a report made under *section 7(11)* or *8(9)*, shall be retained until—

20 (a) the day that is 3 years after the day on which the written record of approval is prepared or the report concerned is made, or

(b) the day on which they are no longer required for any prosecution or appeal to which they are relevant,

whichever is later.

25 (3) The information and documents obtained as a result of surveillance carried out or tracking devices used under this Act, other than those referred to in *subsections (1)* and *(2)*, shall be retained until—

30 (a) the day that is 3 years after the end of the surveillance or monitoring concerned, or

(b) the day on which they are no longer required for any prosecution or appeal to which they are relevant,

whichever is later.

35 **10.—(1)** The relevant Minister shall ensure that information and documents to which this Act applies are stored securely and that only persons who he or she authorises for that purpose have access to them.

Restriction of disclosure of existence of authorisations and other documents.

40 (2) In the interests of the protection of the privacy and other rights of persons, the security of the State, and the aims of preventing the commission of, and detecting, arrestable offences, the relevant Minister may make regulations prescribing—

45 (a) the persons or categories of persons who are to have access for the purposes of this section to information with respect to the existence of authorisations, approvals granted under *sections 7* and *8* and documents referred to in *section 9*,

- (b) the procedures and arrangements for the secure storage, and the maintenance of the security, of that information and those documents, and
- (c) the number of copies that may be made of those documents and the destruction of those copies as soon as possible after they are no longer required under *section 9*. 5

Complaints procedure.

**11.—(1)** A person who believes that he or she might be the subject of an authorisation or an approval under *section 7* or *8* may apply to the Referee for an investigation into the matter.

(2) A superior officer who makes a report under *section 7(11)* or *8(9)*, or receives a report under *section 7(12)* or *8(10)*, may apply to the Referee for an investigation into a matter if he or she believes that such an investigation would be in the interests of justice. 10

(3) If an application is made under this section (other than one that the Referee considers to be frivolous or vexatious), the Referee shall investigate— 15

- (a) whether an authorisation was issued or an approval was granted as alleged in the application, and
- (b) if so, whether there has been a relevant contravention.

(4) If, after investigating the matter, the Referee concludes that there has been a relevant contravention, the Referee shall— 20

- (a) notify the applicant in writing of that conclusion, and
- (b) make a report of his or her findings to the Taoiseach.

(5) In the circumstances referred to in *subsection (4)*, the Referee may also, if he or she is of opinion that the relevant contravention was material and that to do so would be justified in the circumstances, by order do one or more of the following things: 25

- (a) direct—
  - (i) the quashing of the authorisation or the reversal of the approval, and 30
  - (ii) the destruction of the written record of approval concerned, the report under *section 7(11)* or *8(9)* concerned, and any information or documents obtained as a result of the authorisation or approval;
- (b) make a recommendation for the payment of such sum, not exceeding €5,000, specified in the order by way of compensation to the person who was the subject of the authorisation or approval; 35
- (c) report the matter and any recommendation under *paragraph (b)* to— 40
  - (i) the Garda Síochána Ombudsman Commission, in the case of a contravention by the Garda Síochána,
  - (ii) the Minister for Defence, in the case of a contravention by the Defence Forces,

(iii) the Minister for Finance, in the case of a contravention by the Revenue Commissioners;

(d) report the matter and any recommendation under *paragraph (b)* to the judge designated under *section 12*.

5 (6) If the Referee is of opinion that, in all the circumstances, it would not be in the public interest to—

(a) notify the applicant of a conclusion under *subsection (4)(a)* that there has been a relevant contravention,

10 (b) direct the quashing, reversal or destruction under *subsection (5)(a)*, or

(c) make a recommendation for the payment of a sum by way of compensation under *subsection (5)(b)*,

he or she shall decline to do so.

15 (7) If, after investigating the matter, the Referee concludes that there has not been a relevant contravention, the Referee shall give notice in writing to the applicant stating only that there has been no such contravention.

(8) A decision of the Referee under this section is final.

20 (9) A relevant contravention that is not material does not of itself constitute a cause of action at the suit of a person who was the subject of the authorisation or approval concerned.

25 (10) A person in charge of a Garda Síochána station within the meaning of section 99(10) of the Garda Síochána Act 2005, a place under the control of the Defence Forces or the Revenue Commissioners or any other place in which documents relevant to an application under this section are kept shall ensure that the Referee has access to those places, and to the authorisations, written records of approval, reports and other relevant documents that the Referee may request.

30 (11) In this section—

“Referee” means the holder of the office of Complaints Referee under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;

35 “relevant contravention” means a contravention of a provision of *sections 4 to 8*.

40 **12.—**(1) After consulting with the Minister, the President of the High Court shall invite a judge of the High Court to undertake (while serving as such a judge) the duties specified in this section and, if the invitation is accepted, the Government shall designate the judge for the purposes of performing those functions. Review of operation of this Act by designated judge.

(2) The designated judge holds office in accordance with the terms of the designation.

(3) The functions of the designated judge are to—

(a) keep under review the operation of *sections 4 to 8*, and

(b) report to the Taoiseach from time to time and at least once every 12 months concerning any matters relating to the operation of those sections that the designated judge considers should be reported.

(4) For the purpose of performing his or her functions the designated judge may investigate any case in which an authorisation is issued under *section 5* or renewed or varied under *section 6* or an approval is granted under *section 7* or *8*. 5

(5) A person in charge of a Garda Síochána station within the meaning of *section 99(10)* of the Garda Síochána Act 2005, a place under the control of the Defence Forces or the Revenue Commissioners or any other place in which documents relevant to the performance of the functions of the designated judge are kept shall ensure that the designated judge has access to those places, and to the authorisations, written records of approval, reports and other relevant documents that the designated judge may request. 10 15

(6) The Taoiseach shall ensure that a copy of a report under *subsection (3)(b)* is laid before each House of the Oireachtas not later than 6 months after it is made, together with a statement of whether any matter has been excluded under *subsection (7)*. 20

(7) If the Taoiseach considers, after consultation with the designated judge, that the publication of any matter in a report, copies of which are to be laid before the Houses under *subsection (6)*, would be prejudicial to the security of the State, the Taoiseach may exclude that matter from those copies. 25

Confidentiality of information.

**13.—(1)** A person shall not disclose, inside or outside the State, any information in connection with the operation of this Act in relation to surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8*, or reveal the existence of an application for the issue of an authorisation, the variation or renewal of an authorisation under *section 6* or the grant of an approval under *section 7* or *8*, unless the disclosure is to an authorised person and is— 30

(a) for the purposes of the prevention, investigation or detection of crime, 35

(b) for the prosecution of offences,

(c) in the interests of the security of the State, or

(d) required under any other enactment.

(2) A relevant person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable— 40

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both. 45

(3) A person other than a relevant person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €1,000 or imprisonment for a term not exceeding 6 months or both, or

5 (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 2 years or both.

(4) In this section—

“authorised person” means a person referred to in section 62(4)(a) of the Garda Síochána Act 2005;

10 “relevant person” means a person who is or was—

(a) a member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners,

15 (b) a reserve member of the Garda Síochána within the meaning of the Garda Síochána Act 2005,

(c) a member of the Reserve Defence Force within the meaning of the Defence Act 1954,

(d) a member of the civilian staff of the Garda Síochána or of the Defence Forces, or

20 (e) engaged under a contract or other arrangement to work with or for the Garda Síochána, the Defence Forces or the Revenue Commissioners.

25 **14.—(1)** Evidence obtained as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8* is admissible in criminal proceedings. Admissibility of evidence.

(2) Nothing in this Act is to be construed as prejudicing the admissibility of information or material obtained otherwise than as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8*.

30 (3) (a) Information or documents obtained as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8* are admissible in criminal proceedings notwithstanding any error or omission on the face of the authorisation or written record of approval concerned, if the court, having regard in particular to the matters specified in *paragraph (b)*, decides that—

(i) the error or omission concerned was inadvertent, and

40 (ii) the information or document ought to be admitted in the interests of justice.

(b) The matters referred to in *paragraph (a)* are the following:

(i) whether the error or omission concerned was serious or merely technical in nature;

45 (ii) the nature of any right infringed by the obtaining of the information or document concerned;

- (iii) whether there were circumstances of urgency;
- (iv) the possible prejudicial effect of the information or document concerned;
- (v) the probative value of the information or document concerned. 5

(4) (a) Information or documents obtained as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8* are admissible in criminal proceedings notwithstanding any failure by any member of the Garda Síochána, member of the Defence Forces or officer of the Revenue Commissioners concerned to comply with a requirement of the authorisation or approval concerned, if the court, having regard in particular to the matters specified in *paragraph (b)*, decides that— 10  
15

- (i) the member or officer concerned acted in good faith and that the failure was inadvertent, and
- (ii) the information or document ought to be admitted in the interests of justice.

(b) The matters referred to in *paragraph (a)* are the following: 20

- (i) whether the failure concerned was serious or merely technical in nature;
- (ii) the nature of any right infringed by the obtaining of the information or document concerned;
- (iii) whether there were circumstances of urgency; 25
- (iv) the possible prejudicial effect of the information or document concerned;
- (v) the probative value of the information or document concerned.

Disclosure of information.

**15.—(1)** Unless authorised by the court, the existence or non-existence of the following shall not be disclosed by way of discovery or otherwise in the course of any proceedings: 30

- (a) an application under *section 4* or *6*;
- (b) an authorisation;
- (c) an approval granted under *section 7* or *8*; 35
- (d) surveillance carried out under an authorisation or under an approval granted under *section 7*;
- (e) the use of a tracking device under *section 8*; and
- (f) documentary or other information or evidence in relation to— 40
  - (i) the decision to apply for an authorisation or an approval under *section 7* or *8*, or



(ii) anything referred to in *paragraphs (a) to (e)*.

(2) The court shall not authorise the disclosure if it is satisfied that to do so is likely to create a material risk to—

(a) the security of the State,

5 (b) the ability of the State to protect persons from terrorist activity, terrorist-linked activity, organised crime and other serious crime,

10 (c) the maintenance of the integrity, effectiveness and security of the operations of the Garda Síochána, the Defence Forces or the Revenue Commissioners, or

(d) the ability of the State to protect witnesses, including their identities.

15 (3) Notwithstanding *subsection (2)*, the court may authorise the disclosure, subject to such conditions as it considers justified, if in all of the circumstances it is in the interests of justice to do so.

(4) In this section—

“organised crime” has the meaning it has in Part 7 of the Criminal Justice Act 2006;

20 “terrorist activity” and “terror-linked activity” have the meanings they have in section 4 of, and Schedule 2 to, the Criminal Justice (Terrorist Offences) Act 2005.

25 **16.—**(1) The Minister, the Minister for Defence and the Minister for Finance may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed by him or her. Regulations.

(2) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister of the Government making them to be necessary or expedient for the purposes of the regulations.

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

**17.—**The definition of “enactment” in section 98(5) of the Garda Síochána Act 2005 is amended by— Amendment of Garda Síochána Act 2005.

(a) deleting “and” at the end of paragraph (a),

40 (b) in paragraph (b), substituting “Postal and Telecommunications Services Act 1983, and” for “Postal and Telecommunications Services Act 1983;”, and

(c) inserting the following after paragraph (b):

“(c) any provision of the *Criminal Justice (Surveillance) Act 2009*.”.

Amendment of  
Courts  
(Supplemental  
Provisions) Act  
1961.

**18.**—Section 32A(1) (inserted by section 180 of the Criminal Justice Act 2006) of the Courts (Supplemental Provisions) Act 1961 is amended—

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(a) in paragraph (c), by substituting “such assets or proceeds;” for “such assets or proceeds.”, and

(b) by inserting the following after paragraph (c):

“(d) the power to issue, vary or renew an authorisation under *section 5* or *6* of the *Criminal Justice (Surveillance) Act 2009*.”.

10

Short title.

**19.**—This Act may be cited as the Criminal Justice (Surveillance) Act 2009.