



DÁIL ÉIREANN

AN BILLE UM NÓS IMEACHTA COIRIÚIL 2009 CRIMINAL PROCEDURE BILL 2009

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM NÓS IMEACHTA COIRIÚIL 2009 —ROGHCHOISTE

CRIMINAL PROCEDURE BILL 2009 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 6, line 18, to delete “, Equality”.
—An tAire Dlí agus Cirt agus Athchóirithe Dlí.
2. In page 6, between lines 21 and 22, to insert the following subsection:
“(2) In this Act, unless the context otherwise requires, references to—
 - (a) a jury shall, in relation to proceedings conducted before a court sitting without a jury, be construed as references to that court, and
 - (b) a person being sent forward for trial include, where appropriate, references to such a person being sent or being sent forward for trial to, or charged before, a Special Criminal Court.”
—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 4

3. In page 6, to delete lines 32 to 38 and substitute the following:
“(b) an offence involving violence or the threat of violence to a person,
(c) an offence under the Non-Fatal Offences Against the Person Act 1997, and
(d) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a), (b) or (c).”
—An tAire Dlí agus Cirt agus Athchóirithe Dlí.
4. In page 6, line 33, after “person,” to insert the following:
“or any offence which causes harm to a person, including harassment and false imprisonment,”
—Pat Rabbitte.
5. In page 7, line 17, after “by” to insert “the prosecution or”.
—Pat Rabbitte.
6. In page 8, between lines 34 and 35, to insert the following:

“(5) Where a person in respect of whom an offence has been committed, or a family member of that person, proposes to give evidence under *subsection (3)* orally rather than in writing, it shall not be necessary for the court to give any particular direction or warning to that person in respect of his or her evidence.”

[SECTION 4]

—Pat Rabbitte.

7. In page 10, line 13, after “public.” to insert the following:

“(7) This section is without prejudice to the power of a court to receive evidence regarding the effect of an offence, other than an offence to which this section applies, on the person in respect of whom the offence was committed.”.

—Pat Rabbitte.

SECTION 7

8. In page 11, before section 7, but in Part 2, to insert the following new section:

“Legal representation of victim.

7.—In an application under this section the court may make such order as it sees fit to facilitate limited legal representation of a person in respect of whom an offence has been committed or a family member as appropriate, where it is appropriate to do so, limited to assistance in connection with the hearing of evidence under this Part.”.

—Pat Rabbitte.

9. In page 11, between lines 13 and 14, to insert the following:

““compelling evidence”, in relation to a person, means evidence which—

(a) is reliable,

(b) is of significant probative value, and

(c) is such that a jury might reasonably be satisfied beyond a reasonable doubt of the person’s guilt in respect of the offence concerned;”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

10. In page 11, line 23, after “adduced” to insert “by the prosecution”.

—Pat Rabbitte.

11. In page 11, to delete lines 26 to 29 and substitute the following:

“(ii) is of significant probative value, and

(iii) is such that when taken together with all the other evidence adduced in the proceedings concerned, a jury might reasonably be satisfied beyond a reasonable doubt of the person’s guilt in respect of the offence concerned;”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 8

12. In page 12, lines 12 to 18, to delete subsection (1) and substitute the following:

“(1) Subject to *subsection (7)*, this section applies where a person—

(a) is, on or after the commencement of this section, sent forward for trial in respect of a relevant offence and is, or

(b) has, before the commencement of this section, been sent forward for trial but has not yet been tried in respect of a relevant offence and is, on or after such commencement,

[SECTION 8]

tried on indictment in respect of the offence, and acquitted of that offence (whether at the trial, on appeal against conviction or on appeal from such a decision on appeal).”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

- 13.** In page 12, subsection (1), line 13, to delete “, on or after the commencement of this section,”.

—Pat Rabbitte.

- 14.** In page 12, subsection (1), lines 14 and 15, to delete paragraphs (a) and (b).

—Pat Rabbitte.

SECTION 9

- 15.** In page 13, subsection (1), lines 7 to 13, to delete paragraph (a) and substitute the following:

“(a) a person—

- (i) is, on or after the commencement of this section, sent forward for trial in respect of an offence (irrespective of whether or not the offence is a relevant offence) and is, or
- (ii) has, before the commencement of this section, been sent forward for trial but has not yet been tried in respect of an offence (irrespective of whether or not the offence is a relevant offence) and is, on or after such commencement,

tried on indictment in respect of the offence, and acquitted of that offence (whether at the trial, on appeal against conviction or on appeal from such a decision on appeal), and”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

- 16.** In page 13, subsection (3), lines 26 to 28, to delete paragraph (a) and substitute the following:

“(a) there is compelling evidence against a person referred to in *subsection (1)(a)**, and”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[* *Note: This is a reference to the paragraph proposed to be inserted by amendment No. 15.*]

SECTION 10

- 17.** In page 14, subsection (1), line 12, after “directions” to insert the following:

“(including conditions and directions as to placing a stay on the re-trial)”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

- 18.** In page 14, subsection (2), lines 17 to 20, to delete paragraph (a) and substitute the following:

“(a) there is compelling evidence against a person referred to in *section 9(1)(a)**, and”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[SECTION 10]

[* Note: This is a reference to the paragraph proposed to be inserted by amendment No. 15.]

19. In page 14, subsection (2), line 26, after “directions” to insert the following:

“(including conditions and directions as to placing a stay on the re-trial)”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

20. In page 15, subsection (6), line 10, to delete “Where” and substitute “Subject to subsection (1) or (2), where”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 14

21. In page 18, subsection (1), lines 18 to 21, to delete all words from and including “if” in line 18 down to and including “Court” in line 21.

—Pat Rabbitte.

SECTION 15

22. In page 19, lines 7 to 13, to delete subsection (1) and substitute the following:

“(1) This section applies where a person—

(a) is, on or after the commencement of this section, sent forward for trial in respect of a relevant offence and is, or

(b) has, before the commencement of this section, been sent forward for trial but has not yet been tried in respect of a relevant offence and is, on or after such commencement,

tried on indictment in respect of the offence, and acquitted of that offence (whether at the trial, on appeal against conviction or on appeal from such a decision on appeal).”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 22

23. In page 24, paragraph (a), line 7, to delete “or” and substitute “and”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 23

24. In page 24, lines 13 to 24, to delete subsection (1) and substitute the following:

“(1) Where on or after the commencement of this section, a person is tried on indictment and acquitted of an offence, the Director, if he or she is the prosecuting authority in the trial, or the Attorney General as may be appropriate, may, subject to subsection (3)* and section 24, appeal the acquittal in respect of the offence concerned on a question of law to the Supreme Court.

[SECTION 23]

(2) Where on or after the commencement of this section, a person's conviction of an offence on indictment is quashed on appeal by the Court of Criminal Appeal and that Court makes no order for the re-trial of the person in respect of the offence, the Director, if he or she is the prosecuting authority in the trial, or the Attorney General as may be appropriate, may, subject to *subsection (3)** and *section 24*, appeal the decision of the Court of Criminal Appeal not to order a re-trial of the offence concerned on a question of law to the Supreme Court.

(3) An appeal under this section shall lie only where—

- (a) a ruling was made by a court during the course of a trial referred to in *subsection (1)* or the hearing of an appeal referred to in *subsection (2)**, as the case may be, which erroneously excluded compelling evidence, or
- (b) a direction was given by a court during the course of a trial referred to in *subsection (1)*, directing the jury in the trial to find the person not guilty where—
 - (i) the direction was wrong in law, and
 - (ii) the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[* *Note: These are references to the subsection proposed to be inserted by this amendment.*]

25. In page 24, subsection (1), line 24, after “determination” to insert the following:

“, being a question of law that gave rise to a direction by the court to the jury as to the verdict, a ruling of the court that materially weakened the prosecution case, or a direction by the court to the jury as to the law with which the prosecution took issue during the trial”.

—Pat Rabbitte.

26. In page 25, subsection (5), lines 2 and 3, to delete all words from and including “the” in line 2 down to and including “*section (1)*” in line 3 and substitute the following:

“the acquittal referred to in *subsection (1)** or the decision of the Court of Criminal Appeal not to order a re-trial referred to in *subsection (2)**, as the case may be”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[* *Note: These are references to the subsections proposed to be inserted by amendment No. 24.*]

27. In page 25, lines 34 to 46, to delete subsections (9) and (10) and substitute the following:

“(9) On hearing an appeal under this section the Supreme Court may—

- (a) quash the acquittal or reverse the decision of the Court of Criminal Appeal, as the case may be, and order the person to be re-tried for the offence concerned if it is satisfied—

[SECTION 23]

(i) that the requirements of *subsection (3)(a)** or *(3)(b)**, as the case may be, are met, and

(ii) that, having regard to the matters referred to in *subsection (10)*, it is, in all the circumstances, in the interests of justice to do so,

or

(b) if it is not so satisfied, affirm the acquittal or the decision of the Court of Criminal Appeal, as the case may be.

(10) In determining whether to make an order under *subsection (9)(a)*, the Supreme Court shall have regard to—

(a) whether or not it is likely that any re-trial could be conducted fairly,

(b) the amount of time that has passed since the act or omission that gave rise to the indictment,

(c) the interest of any victim of the offence concerned, and

(d) any other matter which it considers relevant to the appeal.

(11) (a) The Supreme Court may make an order for a re-trial under this section subject to such conditions and directions as it considers necessary or expedient (including conditions and directions in relation to the staying of the re-trial) to ensure the fairness of the re-trial.

(b) Subject to *paragraph (a)*, where the Supreme Court makes an order for a re-trial under this section, the re-trial shall take place as soon as practicable.

(12) In this section “compelling evidence”, in relation to a person, means evidence which—

(a) is reliable,

(b) is of significant probative value, and

(c) is such that when taken together with all the other evidence adduced in the proceedings concerned, a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[* *Note: These are references to the subsections proposed to be inserted by amendment No. 24.*]

SECTION 26

28. In page 27, subsection (3), line 35, after “proceedings” to insert “, the legal aid (trial on indictment) certificate”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 31

29. In page 28, before section 31, to insert the following new section:

[SECTION 31]

“Amendment of
Courts of Justice
Act 1924.

31.—The Courts of Justice Act 1924 is amended—

(a) in section 29—

(i) by the insertion of the following subsections after subsection (2):

“(2A) Subject to subsection (2B), a person who has appealed his or her conviction to the Court of Criminal Appeal and who has been granted a re-trial by that Court, may, without prejudice to the determination by the Court to grant a re-trial, appeal to the Supreme Court in respect of a matter raised by him or her in the Court of Criminal Appeal but upon which that Court did not make a determination.

(2B) A person may only appeal to the Supreme Court where—

(a) the matter which is the subject of the appeal is one that is relevant to the conduct of his or her defence in the re-trial, and

(b) the Court of Criminal Appeal or the Attorney General in any case or, if he or she is the prosecuting authority in the matter, the Director of Public Prosecutions, certifies that the matter involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court.”,

and

(ii) by the substitution, in subsection (5A) of “(2), (2A), (2B) or (3)” for “(2) or (3)”,

(b) by the substitution of the following section for section 31:

“Appeal from Central Criminal Court. 31.—A person convicted on indictment before the Central Criminal Court may appeal under this Act to the Court of Criminal Appeal.”,

(c) by the substitution of the following section for section 32:

“Court of Criminal Appeal may make certain orders pending determination of appeal. 32.—The Court of Criminal Appeal shall have power to make any order it may think fit, including an order admitting the appellant to bail, pending the determination of his appeal.”,

and

(d) in section 33, by the substitution of the following subsection for subsection (1):

“(1) The appeal shall be heard and determined by the Court of Criminal Appeal (‘the court’) on—

(a) a record of the proceedings at the trial and on a transcript thereof verified by the judge before whom the case was tried, and

[SECTION 31]

- (b) where the trial judge is of opinion that the record or transcript referred to in paragraph (a) of this subsection does not reflect what took place during the trial, a report by him as to the defects which he considers such record or transcript, as the case may be, contains,

with power to the court to hear new or additional evidence, and to refer any matter for report by the said judge.”.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

[Acceptance of this amendment involves the deletion of section 31.]

SECTION 33

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SECTION 37

- 30.** In page 33, before section 37, but in Chapter 2, to insert the following new section:

“Amendment of section 22 of Courts Act 1991.

37.—Section 22 of the Courts Act 1991 is amended, in subsection (5), by the deletion of “if the complaint or accusation has been substantiated on oath and”.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

- 31.** In page 33, paragraph (a), line 26, to delete “and”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

- 32.** In page 34, line 20, to delete “(if any).”.” and substitute the following:

“(if any).”,

and

- (c) in section 24(5), by the substitution of the following paragraph for paragraph (a):

“(a) If the Court is satisfied that a person who has been remanded in custody is unable to be brought before the Court at the expiration of the period of remand—

(i) by reason of illness or accident, or

(ii) for any other good and sufficient reason,

the Court may, in that person’s absence, remand the person for such further period, which may exceed fifteen days, as the Court considers reasonable.”.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

SCHEDULE

- 33.** In page 36, between lines 18 and 19, to insert the following paragraph:

“Organised Crime

[*SCHEDULE*]

15. An offence under section 71A of the Criminal Justice Act 2006 (directing a criminal organisation).”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

TITLE

34. In page 5, line 29, after “1994,” to insert “THE COURTS ACT 1991,”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.