



DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (LEASÚ) 2009 CRIMINAL JUSTICE (AMENDMENT) BILL 2009

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (LEASÚ) 2009 —AN COISTE

CRIMINAL JUSTICE (AMENDMENT) BILL 2009 —COMMITTEE STAGE

Leasuithe Amendments

SECTION 3

1. In page 4, line 22, to delete “in relation to the commission of an offence”.

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

Section opposed.

—Aengus Ó Snodaigh.

SECTION 5

Section opposed.

—Aengus Ó Snodaigh.

SECTION 6

2. In page 8, to delete lines 16 to 50 and in page 9, to delete lines 1 to 17 and substitute the following:

“(a) involved either—

(i) the possession by the defendant, whilst in the presence of one or more other persons, of any article or item referred to in the Table to this section, or

(ii) there being present in (or, in the case of a false registration plate referred to in paragraph 8 of that Table, present in or affixed to) any vehicle—

(I) the use of which appears connected with the relevant act, and

(II) of which the defendant and one or more other persons were occupants on or about the date of commission of the relevant act,

any such article or item,

and

(b) those circumstances are such as give rise to a reasonable suspicion that the defendant's state of mind was as aforesaid at the time of the relevant act's commission.

Table

1. Any balaclava, boiler suit or other means of disguise or impersonation, including any article of Garda uniform or any equipment supplied to a member of the Garda Síochána or imitation thereof.

[SECTION 6]

2. Any firearm (within the meaning of section 1 of the Firearms Act 1925), ammunition for a firearm or device that appears to the ordinary observer so realistic as to make it indistinguishable from a firearm.
3. Any knife to which section 9(1) of the Firearms and Offensive Weapons Act 1990 applies, weapon of offence within the meaning of section 10(2) of that Act or weapon to which section 12 of that Act applies.
4. Any implement for burglary or other article or item for gaining access to any premises or other structure without the permission of the owner or occupier thereof, including any key or card that has been stolen or any access code unlawfully procured.
5. Any plan of any premises or other structure unrelated to any lawful activity, trade or purpose being pursued or engaged in by one or more of the persons referred to in subsection (6)(a).
6. Any controlled drug (within the meaning of the Misuse of Drugs Act 1977).
7. Any substantial amounts, in cash, of any currency unrelated to any lawful activity, trade, transaction or purpose being pursued or engaged in by one or more of the persons referred to in subsection (6)(a).
8. Any false vehicle registration plate, that is to say, any plate purporting to be a plate for a mechanically propelled vehicle registered under section 131 of the Finance Act 1992 and displaying an identification mark other than that duly assigned by the Revenue Commissioners under Chapter IV of Part II of that Act and regulations thereunder.
9. Any article or item for making a counterfeit of any currency note or coin or making a counterfeit or otherwise for making a forgery of any credit or debit card.
10. Any article or item for making copies of any work, being an article or item of a design enabling, and held in circumstances indicating that it would likely be used for, the making, on a substantial scale, of infringing copies (within the meaning of Part II of the Copyright and Related Rights Act 2000) of the work without the copyright owner's consent.
11. Any other article or item prescribed for the purposes of subsection (6).”.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Section opposed.

—Aengus Ó Snodaigh.

SECTION 7

3. In page 9, line 21, to delete “any member” and substitute “a Chief Superintendent”.

—Charles Flanagan.

4. In page 9, between lines 27 and 28, to insert the following:

“(3) A person shall not be convicted of an offence under this Act based on the opinion given under this section in the absence of corroborating evidence, which shall not include evidence given to a Court based on section 9 of this Act.”.

—Charles Flanagan.

[SECTION 7]

5. In page 9, line 30, to delete “member” and substitute “Chief Superintendent”.
—Charles Flanagan.

Section opposed.

—Aengus Ó Snodaigh.

SECTION 8

6. In page 10, before section 8, to insert the following new section:

“Power of Director of Public Prosecutions to direct that a person be sent forward for trial by Special Criminal Court in relation to a non-scheduled offence.

8.—(1) The Director of Public Prosecutions shall not exercise his or her power under section 46(1) or (2) of the Offences against the State Act 1939 (as amended by section 11 of the Criminal Justice Act 1999) to certify in writing that the ordinary courts are in his opinion inadequate to secure the effective administration of justice and the preservation of public peace and order, in relation to the trial of an offence that is not a scheduled offence within the meaning of that Act, unless the Director is of opinion, on reasonable and objective grounds, that there is a real and substantial risk that jurors or potential jurors in the case may be intimidated or put in fear.

(2) In any proceedings in a court where it is sought to challenge or review the basis of the opinion of the Director of Public Prosecutions referred to in *subsection (1)*, the court shall take all such measures as seem to it appropriate, consistent with the administration of justice, to ensure that the necessary confidentiality of information available to the Director is maintained and that the integrity of the criminal investigation and prosecution processes are preserved.

(3) For the avoidance of doubt, in arriving at the opinion referred to in *subsection (1)*, it is not necessary for the Director of Public Prosecutions to be satisfied beyond reasonable doubt, or on the balance of probabilities, that jurors or potential jurors in a case will be intimidated or put in fear; but the Director must be satisfied:

(a) that there is a real and substantial risk of such an outcome in the particular case concerned; and

(b) that measures lawfully available in relation to the protection of jurors and their identities are inadequate to meet the situation.”

—Pat Rabbitte, Seán Sherlock.

7. In page 11, subsection (4), lines 9 to 21, to delete all words from and including “unless” in line 9 down to and including “House” in line 21.
—Aengus Ó Snodaigh.

Section opposed.

—Pat Rabbitte, Seán Sherlock, Aengus Ó Snodaigh.

SECTION 9

8. In page 11, before section 9, to insert the following new section:

“Certain offences not to be scheduled offences.

9.—Paragraph 1 of the Appendix to the Offences against the State (Scheduled Offences) Order 1972 is revoked.”

—Pat Rabbitte, Seán Sherlock.

Section opposed.

—Aengus Ó Snodaigh.

[SECTION 14]

SECTION 14

9. In page 14, lines 13 and 14, to delete “(other than a person under the age of 18 years)”.

—Pat Rabbitte, Seán Sherlock.

10. In page 15, lines 2 and 3, to delete “, as part of the offender’s sentence,” and substitute “, by way of a civil order following conviction,”.

—Pat Rabbitte, Seán Sherlock.

11. In page 15, between lines 19 and 20, to insert the following:

“(4) The orders made under subsection (3) shall fall within the terms of a scheme to be proposed by the Minister within 21 days which sets out the nature and extent of any restrictions under this section. In respect of a scheme made under this subsection the Minister shall:

(a) cause a draft of the proposed scheme to be laid before each House of the Oireachtas, and

(b) not make the scheme unless and until a resolution approving of the draft has been passed by each such House.”.

—Charles Flanagan.

SECTION 18

12. In page 16, before section 18, but in Part 2, to insert the following new section:

“Amendment of Proceeds of Crime Act 1996.

18.—The Proceeds of Crime Act 1996 is amended in section 4(1) by the substitution of “2 years” for “7 years”.”.

—Pat Rabbitte, Seán Sherlock.

13. In page 16, before section 18, but in Part 2, to insert the following new section:

“Amendment of Criminal Justice Act 1994.

18.—The Criminal Justice Act 1994 is amended –

(a) in section 3(1) by the insertion of the following definition—

“ ‘gift’ includes a transfer in consideration of natural love and affection or otherwise than for full commercial value, and includes the transfer by one spouse of property to another spouse, or an arrangement between spouses for the joint ownership of any property;”.

(b) in section 24 by the insertion after subsection (10) of the following subsection—

“(11) A court may on or at any time after an application under this section direct the respondent to the application to deliver a statement of his or her income and assets, but such a statement shall not be admissible in evidence against the person for any offence other than an offence of contempt of court arising from a breach of an order under this subsection.”.

—Pat Rabbitte, Seán Sherlock.

14. In page 17, line 7, after “Irish ship” to insert the following:

[SECTION 18]

“(within the meaning of section 9 of the Mercantile Marine Act 1955)”.

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

SECTION 19

15. In page 17, lines 22 to 27, to delete all words from “if—” in line 22, down to and including “State” in line 27.

—Pat Rabbitte, Seán Sherlock.

16. In page 18, subsection (2)(c), line 1, to delete “following subsection” and substitute “following subsections”.

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

17. In page 18, line 9, to delete “offence.” and substitute the following:

“offence.

(9) In this section ‘Irish ship’ has the meaning it has in section 9 of the Mercantile Marine Act 1955.”.

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

18. In page 18, subsection (4)(b), line 26, to delete “following subsection” and substitute “following subsections”.

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

19. In page 18, to delete line 31 and substitute the following:

“State on the date of the commission of the offence.

(6) In this section ‘Irish ship’ has the same meaning as it has in section 7.”.

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

SECTION 20

20. In page 18, before section 20, but in Part 3, to insert the following new section:

“Amendment of section 41 (substantive elements of offence) of Act of 1999.

20.—Section 41 of the Act of 1999 is amended—

(a) in subsection (1)(a), by substituting “who (whether in or outside the State) harms” for “who harms”, and

(b) by inserting the following subsections after subsection (3):

“(3A) A person shall be guilty of an offence under this section for conduct that the person engages in outside the State only if—

(a) the conduct takes place on board an Irish ship (within the meaning of section 9 of the Mercantile Marine Act 1955),

(b) the conduct takes place on an aircraft registered in the State,

(c) the person is an Irish citizen, or

(d) the person is ordinarily resident in the State.

[SECTION 20]

(3B) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under subsection (1) is, for the purposes of subsection (3A)(d), ordinarily resident in the State on the date of the commission of the offence.”.”.

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

21. In page 18, line 42, after “Síochána” to insert the following:

“who for the purposes of this section shall be a Garda not below the rank of Sergeant”.

—Charles Flanagan.

22. In page 19, to delete lines 13 to 15 and substitute the following:

“detention of the person for a period that is longer than the period which is authorised by or under the other provisions of this section.”.”.

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

23. In page 19, to delete line 17 and substitute the following:

““(4BA) (a) Without prejudice to paragraph (b) of this subsection, where a judge hearing an application under”.

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

24. In page 19, to delete line 17 and substitute the following:

““(4BA) (a) An application under this subsection shall be made to the Judge of a Circuit Court.

(b) Where a judge hearing an application under”.

—Charles Flanagan.

25. In page 19, lines 24 and 25, to delete all words from and including “(without” in line 24 down to and including “subsection)” in line 25.

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

26. In page 19, between lines 30 and 31, to insert the following:

“(b) Where a judge makes a direction or exclusion under paragraph (a), he or she shall direct that proceedings of the application are recorded by an official stenographer.”.

—Charles Flanagan.

27. In page 20, line 21, to delete “paragraph (a)(ii)” and substitute “paragraph (a)”.

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

28. In page 22, line 26, to delete “District” and substitute “Circuit”.

—Charles Flanagan.

Section opposed.

—Aengus Ó Snodaigh.

SECTION 21

29. In page 22, subsection (1), between lines 45 and 46, to insert the following:

[SECTION 21]

“(a) in subsection (2)(b), by substituting ‘superintendent’ for ‘chief superintendent’”.

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

30. In page 22, to delete line 47 and substitute the following:

““(3A) (a) Without prejudice to paragraph (b), where a judge hearing an application under”.

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

31. In page 22, to delete line 47 and substitute the following:

““(3A) (a) An application under this subsection shall be made to the Judge of a Circuit Court.

(b) Where a judge hearing an application under”.

—Charles Flanagan.

32. In page 23, lines 6 and 7, to delete “(without prejudice to paragraph (b))”.

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

33. In page 23, between lines 12 and 13, to insert the following:

“(b) Where a judge makes a direction or exclusion under paragraph (a), he or she shall direct that proceedings of the application are recorded by an official stenographer.”.

—Charles Flanagan.

34. In page 24, line 2, to delete “paragraph (a)(ii)” and substitute “paragraph (a)”.

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

35. In page 26, line 21, to delete “or the District Court”.

—Charles Flanagan.

Section opposed.

—Aengus Ó Snodaigh.

SECTION 22

36. In page 27, to delete line 6 and substitute the following:

““(4A) (a) Without prejudice to paragraph (b), where a judge hearing an application under”.

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

37. In page 27, to delete line 6 and substitute the following:

““(4A) (a) An application under this subsection shall be made to the Judge of a Circuit Court.

(b) Where a judge hearing an application under”.

—Charles Flanagan.

38. In page 27, lines 13 and 14, to delete “(without prejudice to paragraph (b))”.

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

39. In page 27, between lines 19 and 20, to insert the following:

[SECTION 22]

“(b) Where a judge makes a direction or exclusion under paragraph (a), he or she shall direct that proceedings of the application are recorded by an official stenographer.”.

—Charles Flanagan.

40. In page 28, line 12, to delete “paragraph (a)(ii)” and substitute “paragraph (a)”.

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

41. In page 30, line 30, to delete “or the District Court”.

—Charles Flanagan.

Section opposed.

—Aengus Ó Snodaigh.

SECTION 23

42. In page 31, line 43, to delete “District” and substitute “Circuit”.

—Charles Flanagan.

Section opposed.

—Aengus Ó Snodaigh.

SECTION 24

43. In page 32, before section 24, but in Part 4, to insert the following new section:

“24.—In circumstances where a Judge of the Circuit Court is not available to hear an application under this Part, such application may be made to a Judge of the District Court, but only where it can be reasonably shown that a Judge of the Circuit Court was not available in the relevant Circuit either by reason of the allocation of Judges to Circuits outside Dublin, or by reason of the application falling during a court vacation period.”.

—Charles Flanagan.