



SEANAD ÉIREANN

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

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

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

CRIMINAL JUSTICE (AMENDMENT) BILL 2009 —COMMITTEE STAGE

*Leasuithe
Amendments*

SECTION 7

1. In page 9, line 50, to delete “any member” and substitute “a Chief Superintendent”.

—*Senator Eugene Regan.*

2. In page 9, line 50, after “Síochána” to insert “not below the rank of Chief Superintendent”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast,
Dominic Hannigan.*

3. In page 10, between lines 10 and 11, 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.”

—*Senator Eugene Regan.*

Section opposed.

—*Senator Ivana Bacik.*

SECTION 8

Section opposed.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast,
Dominic Hannigan, Ivana Bacik.*

4. In page 11, 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.

[SECTION 8]

(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.”
—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 9

5. 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.”

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

Section opposed.

—*Senator Ivana Bacik.*

SECTION 14

6. In page 15, line 39, to delete “(other than a person under the age of 18 years)”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

7. In page 16, lines 29 and 30, to delete “, as part of the offender’s sentence,” and substitute “, by way of a civil order following conviction,”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

8. In page 16, after line 50, 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.”

—*Senator Eugene Regan.*

[SECTION 18]

SECTION 18

9. In page 18, 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”.”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

10. In page 18, 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.”.”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 19

11. In page 19, lines 20 to 25, to delete all words from and including “if—” in line 20, down to and including “State.”” in line 25.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 21

12. In page 21, line 20, after “Síochána” to insert the following:

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

—*Senator Eugene Regan.*

13. In page 21, to delete line 38 and substitute the following:

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

(b) Without prejudice to paragraph (b) of this”.

—*Senator Eugene Regan.*

[SECTION 21]

14. In page 22, between lines 6 and 7, 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.”.

—*Senator Eugene Regan.*

15. In page 22, lines 33 to 35, to delete all words from and including “, including” in line 33 down to and including “applicant” in line 35.

—*Senator Ivana Bacik.*

16. In page 22, between lines 42 and 43, to insert the following:

“(III) the person to whom the application relates and any legal representative (whether of that person or the applicant).”.

—*Senator Ivana Bacik.*

17. In page 23, to delete lines 42 to 46.

—*Senator Ivana Bacik.*

18. In page 25, line 5, to delete “District” and substitute “Circuit”.

—*Senator Eugene Regan.*

SECTION 22

19. In page 25, subsection (1), lines 25 and 26, to delete paragraph (a).

—*Senator Ivana Bacik.*

20. In page 25, to delete line 28 and substitute the following:

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

(b) Without prejudice to paragraph (b), where a”.

—*Senator Eugene Regan.*

21. In page 25, between lines 40 and 41, 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.”.

—*Senator Eugene Regan.*

22. In page 26, lines 17 to 19, to delete all words from and including “, including” in line 17 down to and including “applicant” in line 19.

—*Senator Ivana Bacik.*

23. In page 26, between lines 26 and 27, to insert the following:

“(III) the person to whom the application relates and any legal representative (whether of that person or the applicant).”.

—*Senator Ivana Bacik.*

24. In page 27, to delete lines 44 to 48.

—*Senator Ivana Bacik.*

25. In page 29 line 2, to delete “or the District Court”.

—*Senator Eugene Regan.*

[SECTION 23]

SECTION 23

26. In page 29, to delete line 35 and substitute the following:

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

(b) Without prejudice to paragraph (b), where a”.

—*Senator Eugene Regan.*

27. In page 29, after line 47, 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.”.

—*Senator Eugene Regan.*

28. In page 30, lines 26 to 28, to delete all words from and including “, including” in line 26 down to and including “applicant” in line 28.

—*Senator Ivana Bacik.*

29. In page 30, between lines 35 and 36, to insert the following:

“(III) the person to whom the application relates and any legal representative (whether of that person or the applicant).”.

—*Senator Ivana Bacik.*

30. In page 32, to delete lines 1 to 5.

—*Senator Ivana Bacik.*

31. In page 33, line 9, to delete “or the District Court”.

—*Senator Eugene Regan.*

SECTION 24

32. In page 34, line 24, to delete “District” and substitute “Circuit”.

—*Senator Eugene Regan.*

SECTION 25

33. In page 34, before section 25 but in Part 4, to insert the following new section:

“25.—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.”.

—*Senator Eugene Regan.*

SECTION 26

Section opposed.

—*Senator Ivana Bacik.*