



**AN BILLE UM CHEARTAS COIRIÚIL (BARÁNTAIS
CHUARDAIGH), 2012
CRIMINAL JUSTICE (SEARCH WARRANTS) BILL 2012**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of Bill

The primary purpose of the Bill is to restore, in updated form, the search warrant provision in section 29 of the Offences against the State Act 1939 which was struck down by the Supreme Court in its judgment in the case of *Ali Charaf Damache v The Director of Public Prosecutions, Ireland and the Attorney General* (delivered on 23 February 2012). The Bill also amends the provisions in the Criminal Justice (Drug Trafficking) Act 1996 relating to the issue of search warrants under section 26 of the Misuse of Drugs Act 1977.

Provisions of the Bill

Section 1

Section 1 substitutes section 29 of the Offences against the State Act 1939. The substituted section provides as follows:

Subsection (1) identifies the offences to which section 29 applies. They are: an offence under the 1939 Act or the Criminal Law Act 1976; an offence that is a scheduled offence for the purposes of Part V of the 1939 Act (i.e. offences that may be tried before the Special Criminal Court), treason and the related inchoate offences of attempting, conspiring or inciting.

Subsection (2) provides that a District Court judge may issue a warrant for the search of a place. In order to do so the judge must be satisfied by information on oath of a member of the Garda Síochána of sergeant rank (or above) that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence to which the section applies is to be found in that place.

Subsection (3) empowers a member of the Garda Síochána of superintendent rank (or above) to issue a search warrant under the section to a sergeant (or above). This power is qualified by subsections (4) and (5).

Subsection (4) provides that a superintendent may only issue a warrant under this section if (i) he or she is satisfied that the warrant is necessary for the proper investigation of an offence to which the section applies and (ii) he or she is satisfied that circumstances of urgency giving rise to the need for the immediate issue of the warrant would render it impracticable to apply to a District Court judge.

Subsection (5) adds a further qualification to the power of a superintendent to issue a warrant under this section — the issuing officer must be independent of the investigation concerned. “Independent of” is defined in subsection (12) as meaning not being in charge or, or involved in the investigation concerned.

Subsection (6) concerns the information to be set out in the warrant and the actions that may be carried out pursuant to the warrant. The actions are those of entry, search (of both the place and any person found there), and seizure of anything found at the place or in the possession of a person present at the place. The seizure power relates to items that the member of the Garda Síochána/Defence Forces reasonably believes to be evidence of or related to the commission of an offence to which the section applies. The right to enter is subject to the obligation to produce the warrant or a copy of it, if requested. The entry may be achieved by use of reasonable force, if necessary.

A warrant issued by a District Court judge permits multiple entries within 1 week of the date of issue of the warrant.

Subsection (7) specifies a maximum duration of 48 hours for superintendent-issued warrants from the time of the issue of the warrant.

Subsection (8) provides that a member of the Garda Síochána/Defence Forces acting under the authority of a warrant under the section may require any person present at the place where the search is being carried out to give to the member his or her name and address. It provides an arrest power in the event that any person: obstructs or attempts to obstruct a member in the carrying out of their duties, fails to give a member his or her name and address, or gives a false or misleading name or address.

Subsection (9) creates a summary offence. It provides that a person who: obstructs or attempts to obstruct a member acting under the authority of a warrant, fails to comply with a requirement to provide their name and address when requested, or who gives a false or misleading name or address commits an offence. The maximum penalties on conviction are a class A fine (i.e. a fine not exceeding €5,000) and/or imprisonment for a term not exceeding 12 months.

Subsection (10) provides that the power to issue a warrant under this section is without prejudice to any other power conferred by statute to issue a warrant for the search of any place or person.

Subsection (11) requires a superintendent (or above) who issues a warrant under this section to record the grounds on which he/she issued the warrant either at the time or as soon as reasonably practicable after issuing the warrant.

Subsection (12) provides a definition of “independent of” and “place” for the purposes of the section.

Section 2

This section amends section 26 of the Misuse of Drugs Act 1977. Section 26 provides for judge/peace commissioner-issued search warrants in relation to suspected drug offences. The amendment updates the cross references to section 8 of the Criminal Justice (Drug Trafficking) Act 1996 already contained in the section and is consequential to the amendment to that Act contained in section 3.

Section 3

This section amends section 8 of the Criminal Justice (Drug Trafficking) Act 1996. Section 8(2) permits a superintendent (or above) to issue a warrant under section 26 of the Misuse of Drugs Act 1977 in circumstances of urgency requiring the immediate issue of a warrant and where it would be impracticable to apply to either a District Court judge or a peace commissioner. The amendments are for the purpose of inserting two additional safeguards.

Subsection (1) inserts two new subsections after subsection (2) of section 8. New subsection (2A) provides that only a superintendent who is independent of the investigation concerned may issue a warrant under section 26. “independent of” is defined as not being in charge of, or involved in the investigation concerned. New subsection (2B) requires a superintendent who issues a warrant under section 26 to record the grounds on which he/she issued the warrant either at the time or as soon as reasonably practicable after issuing the warrant.

Subsection (2) provides that this section only applies to search warrants issued under section 26 after the commencement of this section.

Section 4

This provides for the short title of the Bill and commencement arrangements. It provides that the Act will commence on the day following its passing i.e. the day following its signature by the President.

Financial Implications

It is not expected that the proposed legislation will result in any significant costs to the Exchequer.

*An Roinn Dlí agus Cirt agus Comhionannais,
Meitheamh, 2012.*