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Number 27 of 2010

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*Number 27 of 2010*

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**CRIMINAL PROCEDURE ACT 2010**

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AN ACT TO AMEND AND EXTEND THE CRIMINAL JUSTICE ACT 1993; TO AMEND CRIMINAL LAW AND PROCEDURE IN OTHER RESPECTS, INCLUDING MAKING PROVISION FOR EXCEPTIONS TO THE RULE AGAINST DOUBLE JEOPARDY SO AS TO ENABLE THE COURT OF CRIMINAL APPEAL TO HEAR AND DETERMINE APPLICATIONS BROUGHT IN CERTAIN CIRCUMSTANCES BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO QUASH CERTAIN ACQUITTALS AND TO HAVE PERSONS WHO ARE THE SUBJECT OF THOSE APPLICATIONS RE-TRIED, AND TO PROVIDE FOR AN APPEAL TO THE SUPREME COURT ON A POINT OF LAW FROM A DETERMINATION OF THE COURT OF CRIMINAL APPEAL IN RESPECT OF SUCH APPLICATIONS; TO EXTEND THE POWERS OF THE GARDA SÍOCHÁNA IN RELATION TO THE INVESTIGATION OF CERTAIN OFFENCES; TO EXTEND THE CIRCUMSTANCES IN WHICH THE DIRECTOR OF PUBLIC PROSECUTIONS OR THE ATTORNEY GENERAL, AS MAY BE APPROPRIATE, MAY TAKE AN APPEAL IN CRIMINAL PROCEEDINGS; TO AMEND THE CRIMINAL JUSTICE (EVIDENCE) ACT 1924 AND TO AMEND AND EXTEND THE LAW RELATING TO EVIDENCE IN OTHER RESPECTS; TO AMEND THE CRIMINAL JUSTICE ACT 1994, THE COURTS ACT 1991, THE CRIMINAL PROCEDURE ACT 1967, THE CRIMINAL JUSTICE (LEGAL AID) ACT 1962, THE CRIMINAL JUSTICE ACT 1951, THE OFFENCES AGAINST THE STATE ACT 1939 AND THE COURTS OF JUSTICE ACT 1924; AND TO PROVIDE FOR RELATED MATTERS.

[20th July, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Criminal Procedure Act 2010. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation. **2.—**(1) In this Act unless the context otherwise requires—

“Act of 1962” means the Criminal Justice (Legal Aid) Act 1962;

“Act of 1967” means the Criminal Procedure Act 1967;

“Act of 1993” means the Criminal Justice Act 1993;

“broadcast” has the meaning it has in section 2 of the Broadcasting Act 2009;

“children detention school” has the meaning it has in section 3(1) of the Children Act 2001;

“Director” means the Director of Public Prosecutions;

“legal aid (Supreme Court) certificate” has the meaning it has in the Act of 1962;

“legal aid (trial on indictment) certificate” has the meaning it has in the Act of 1962;

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

“prison” has the meaning it has in section 2 of the Prisons Act 2007;

“publication” means publication, other than by way of broadcast, to the public or a portion of the public.

(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.

Expenses. **3.—**The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

## PART 2

### IMPACT OF CRIME ON VICTIM

Amendment of section 5 of Act of 1993. **4.—**The Act of 1993 is amended by the substitution of the following section for section 5:

“Effect of certain offences on persons in respect of whom offence committed.

- 5.—(1) This section applies to—
- (a) a sexual offence within the meaning of the Criminal Evidence Act 1992,
  - (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).
- (2) (a) When imposing sentence on a person for an offence to which this section applies, a court shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.
- (b) For the purposes of paragraph (a), a ‘person in respect of whom the offence was committed’ includes, where, as a result of the offence, that person has died, is ill or is otherwise incapacitated, a family member of that person.
- (3) (a) When imposing sentence on a person for an offence to which this section applies, a court shall, upon application by the person in respect of whom such offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person.
- (b) For the purpose of paragraph (a), where the person in respect of whom the offence was committed—
- (i) is a child under the age of 14 years, the child, or his or her parent or guardian, may give evidence as to the effect of the offence concerned on that child,
  - (ii) is—
    - (I) a person with a mental disorder (not resulting from the offence concerned), the person or a family member,

(II) a person with a mental disorder (not resulting from the offence concerned), who is a child, the person or his or her parent or guardian,

may give evidence as to the effect of the offence concerned on that person,

(iii) is a person who is ill or is otherwise incapacitated as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned on that person and on his or her family members,

(iv) has died as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned—

(I) on the person between the commission of the offence and his or her death (where relevant), and

(II) on the family members of the person who has died.

(c) A person who has been convicted of an offence to which this section applies may not give evidence pursuant to paragraph (b) in respect of that offence.

(d) Where more than one family member seeks to avail of paragraph (b), the court may direct the family members to nominate one or more family members for the purpose of that paragraph.

(e) Where the court directs the family members to nominate one or more family members pursuant to paragraph (d) and the family members are unable to reach agreement, the court may, having regard to the degree of relationship between the family members and the person in respect of whom the offence was committed, nominate one or more family members as it considers appropriate.

(4) Where no evidence is given pursuant to subsection (3), the court shall not draw an inference that the offence had little or no effect (whether long-term or otherwise) on the person in respect of whom the offence was committed or, where appropriate, on his or her family members.



- (5) (a) The court may, in the interests of justice, order that information relating to the evidence given under subsection (3) or a part of it shall not be published or broadcast.
- (b) If any matter is published or broadcast in contravention of paragraph (a), the following persons, namely—
- (i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
  - (ii) in the case of any other publication, the person who publishes it, and
  - (iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,
- shall be guilty of an offence.
- (c) A person guilty of an offence under paragraph (b) shall be liable—
- (i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or
  - (ii) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.
- (d) Where an offence under paragraph (b) is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (e) Where the affairs of a body corporate are managed by its members, paragraph (d) shall apply in relation to the acts and defaults of a member in connection with his or her functions of

management as if he or she were a director or manager of the body corporate.

(6) In this section and in sections 5A and 5B, unless the context otherwise requires—

‘broadcast’ has the meaning it has in section 2 of the Broadcasting Act 2009;

‘child’ means a person under the age of 18;

‘family member’ means—

- (a) a spouse or partner of the person,
- (b) a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the person,
- (c) a person who is acting in *loco parentis* to the person,
- (d) a dependant of the person, or
- (e) any other person whom the court considers to have had a close connection with the person;

‘guardian’, in relation to a child, has the meaning it has in the Children Act 2001;

‘mental disorder’ includes a mental illness, mental disability, dementia or any disease of the mind;

‘publish’ means publish, other than by way of broadcast, to the public or a portion of the public.”.

Evidence through television link.

5.—The Act of 1993 is amended by the insertion of the following section after section 5:

“5A.—(1) (a) A child or a person with a mental disorder in respect of whom an offence to which section 5 applies was committed, may give evidence pursuant to section 5(3), whether from within or outside the State, through a live television link unless the court sees good reason to the contrary.

(b) Any other person in respect of whom an offence to which section 5 applies was committed may, with the leave of the court, give evidence pursuant to section 5(3), whether from within or outside the State, through a live television link.

(2) Evidence given under subsection (1) shall be video-recorded.

(3) While evidence is being given pursuant to subsection (1) (except through an intermediary pursuant to section 5B(1)), neither the judge, nor the barrister or solicitor concerned in the examination of the witness, shall wear a wig or gown.”.

6.—The Act of 1993 is amended by the insertion of the following section after section 5A: Evidence through intermediary.

“5B.—(1) Where a child or a person with a mental disorder is giving, or is to give evidence through a live television link, pursuant to section 5A, the court may, on the application of the prosecution or the accused, if satisfied that, having regard to the age or mental condition of the witness, the interests of justice require that any questions to be put to the witness be put through an intermediary, direct that any such questions be so put.

(2) Questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his or her age and mental condition, the meaning of the questions being asked.

(3) An intermediary referred to in subsection (1) shall be appointed by the court and shall be a person who, in its opinion, is competent to act as such.”.

### PART 3

#### EXCEPTIONS TO RULE AGAINST DOUBLE JEOPARDY

#### CHAPTER 1

#### *Interpretation*

7.—In this Part, unless the context otherwise requires—

Interpretation (*Part 3*).

“Act of 1984” means the Criminal Justice Act 1984;

“acquittal” includes a verdict of not guilty returned by a jury and a verdict of not guilty returned by a jury by direction of a court;

“application for a re-trial order” means an application under *section 8 or 9*;

“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;

“Court” means the Court of Criminal Appeal;

“legal aid (re-trial order) certificate” has the meaning it has in the Act of 1962;

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

- (a) which was not adduced by the prosecution in the proceedings in respect of which the person was acquitted (nor in any appeal proceedings to which the original proceedings related), and
- (b) which could not, with the exercise of due diligence, have been adduced during those proceedings, and
- (c) is evidence which—
  - (i) is reliable,
  - (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;

“offence against the administration of justice” means—

- (a) an offence under section 1 of the Prevention of Corruption Act 1906 in so far as the offence concerned relates to criminal proceedings,
- (b) an offence under section 41 of the Criminal Justice Act 1999,
- (c) attempting to pervert the course of justice,
- (d) perjury, or
- (e) conspiring or inciting another person to commit any of the offences referred to in *paragraphs (a) to (d)*;

“place” includes—

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

“relevant offence” means an offence specified in the Schedule;

“re-trial order” means an order of the Court under *subsection (1) or (2) of section 10*.

## CHAPTER 2

### *Application for re-trial orders under Part 3*

Application by Director seeking re-trial order where new and compelling evidence becomes available.

**8.—(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,

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).

(2) For the purposes of this section, a person who has been acquitted of a relevant offence in proceedings referred to in *subsection (1)* shall be deemed to also have been acquitted of any relevant offence in respect of which he or she could have been convicted in the proceedings concerned by virtue of the first-mentioned offence charged in the indictment, other than an offence for which he or she has been convicted.

(3) The Director may apply to the Court for a re-trial order where it appears to him or her—

- (a) that there is new and compelling evidence against a person referred to in *subsection (1)* in relation to the relevant offence concerned, and
- (b) that it is in the public interest to do so.

(4) Only one application for a re-trial order may be made by the Director in respect of a person in relation to a relevant offence that was the subject of the application and no further application may be made irrespective of whether the person concerned is subsequently acquitted of the offence concerned in a re-trial ordered pursuant to an application under this section.

(5) An application for a re-trial order under *subsection (3)* shall be on notice to the person concerned.

(6) If a person fails to appear before the Court in respect of the hearing of the application, the Court, if it is satisfied that it is, in all the circumstances, in the interests of justice to do so, may proceed to hear and determine the application in the absence of the person.

(7) This section shall not apply to a relevant offence in respect of which a person was the subject of a special verdict under section 5 of the Criminal Law (Insanity) Act 2006.

9.—(1) This section applies where—

- (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

Application by Director for re-trial order where previous acquittal tainted.

conviction or on appeal from such a decision on appeal), and

- (b) the person, or another person, has been convicted of an offence against the administration of justice relating to the proceedings which resulted in the acquittal referred to in *paragraph (a)*.

(2) For the purposes of this section, a person who has been acquitted of an offence in proceedings referred to in *subsection (1)(a)*, shall be deemed to also have been acquitted of any offence in respect of which he or she could have been convicted in the proceedings concerned by virtue of the first-mentioned offence charged in the indictment, other than an offence for which he or she has been convicted.

(3) The Director may apply to the Court for a re-trial order where it appears to him or her—

- (a) there is compelling evidence against a person referred to in *subsection (1)(a)*, and
- (b) that it is in the public interest to do so.

(4) No application for a re-trial order in respect of a person may be made by the Director under this section where proceedings relating to an offence against the administration of justice referred to in *subsection (1)(b)* are pending before any court.

(5) Only one application for a re-trial order may be made by the Director in respect of a person in relation to an offence that was the subject of the application and no further application may be made irrespective of whether the person concerned is subsequently acquitted of the offence concerned in a re-trial ordered pursuant to an application under this section.

(6) An application for a re-trial order under *subsection (3)* shall be on notice to the person concerned.

(7) If a person fails to appear before the Court in respect of the hearing of the application, the Court, if it is satisfied that it is, in all the circumstances, in the interests of justice to do so, may proceed to hear and determine the application in the absence of the person.

(8) For the purposes of *subsection (1)(b)*, the reference to “convicted of an offence”, in relation to a person, includes a reference to the conviction of a person after signing a plea of guilty and being sent forward for sentence under section 13(2)(b) of the Criminal Procedure Act 1967.

Re-trial orders.

**10.—(1)** If on hearing an application under *section 8*, the Court is satisfied—

- (a) that there is new and compelling evidence against a person referred to in *section 8(1)*, and
- (b) that, having had regard to the matters referred to in *subsection (3)*, it is, in all the circumstances, in the interests of justice to do so,

the Court shall make a re-trial order quashing the person’s acquittal and directing that the person be re-tried for the relevant offence, subject to such conditions and directions (including conditions and

directions as to placing a stay on the re-trial) as the Court considers necessary or expedient to ensure the fairness of the re-trial ordered under this subsection.

(2) If on hearing an application under *section 9*, the Court is satisfied—

- (a) there is compelling evidence against a person referred to in *section 9(1)(a)*, and
- (b) that, having had regard to the matters referred to in *subsection (3)*, it is, in all the circumstances, in the interests of justice to do so,

the Court shall make a re-trial order quashing the person's acquittal and directing that the person be re-tried for the offence concerned, subject to such conditions and directions (including conditions and directions as to placing a stay on the re-trial) as the Court considers necessary or expedient to ensure the fairness of the re-trial ordered under this subsection.

(3) In determining whether to make an order under *subsection (1)* or *(2)*, the 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 interests of any victim of the offence concerned, and
- (d) any other matter which the Court considers relevant to the application.

(4) For the purposes of determining whether to make an order under *subsection (1)* or *(2)*, the Court may—

- (a) order the production of any document, exhibit or other thing connected with the proceedings to which the application relates,
- (b) order any person who would have been a compellable witness in the proceedings to which the application relates to attend for examination and be examined before the Court, whether or not the person was called in those proceedings,
- (c) receive the evidence, if tendered, of any witness, or
- (d) generally make such order as may be necessary for doing justice in the application before the Court.

(5) Evidence may be admitted in a hearing under this section, whether or not it would have been admissible in earlier proceedings against the person who is the subject of the application under *section 8* or *9*.

(6) Subject to *subsection (1)* or *(2)*, where the Court makes a re-trial order, the re-trial shall take place as soon as practicable.

(7) In this section “document”, in relation to an application by the Director under *section 9*, includes a transcript of the trial of any person referred to in *section 9(1)(b)*.

Amendment of Act of 1962.

**11.**—The Act of 1962 is amended—

(a) by the insertion of the following section after section 6B:

“Legal aid (re-trial order) certificate.

6C.—(1) Where—

- (a) an application for a re-trial order has been made in relation to a person, and
- (b) a certificate for free legal aid (in this Act referred to as a ‘legal aid (re-trial order) certificate’) is granted in respect of him or her by the Court of Criminal Appeal,

the person shall be entitled to free legal aid in the preparation and conduct of his or her case in relation to an application under *section 8 or 9* of the *Criminal Procedure Act 2010* and to have a solicitor and counsel assigned to him or her for that purpose in such manner as may be prescribed by regulations under section 10 of this Act.

(2) A legal aid (re-trial order) certificate shall be granted in relation to a person in respect of whom an application under *section 8 or 9* of the *Criminal Procedure Act 2010* has been made if (but only if)—

- (a) an application is made therefor,
- (b) it appears to the Court of Criminal Appeal that—
  - (i) the means of the person are insufficient to enable him or her to obtain legal aid, and
  - (ii) it is essential in the interests of justice that the person should have legal aid in the preparation and conduct of his or her case in relation to the application for a re-trial order.

(3) In this section ‘application for a re-trial order’ has the meaning it has in *section 7* of the *Criminal Procedure Act 2010*.”

(b) in section 7, by the addition of the following subsection:

“(4) Where a legal aid (re-trial order) certificate has been granted in respect of a person, any fees, costs or



other expenses properly incurred in preparing and conducting the person's case in relation to the application to which the certificate relates shall, subject to the regulations under section 10 of this Act, be paid out of moneys provided by the Oireachtas.”,

and

- (c) in section 9(2), by the substitution of “, a legal aid (protection of persons order) certificate or a legal aid (re-trial order) certificate” for “or a legal aid (protection of persons order) certificate”.

**12.—(1)** Subject to this section, an application for a re-trial order shall be conducted in open court. Orders to safeguard fairness of re-trial.

(2) Where the Court is hearing an application for a re-trial order under *section 8* or *9* and is satisfied that it is in the interests of justice to do so, it may exclude from the Court during the proceeding—

- (a) the public or any portion of the public, or  
 (b) any particular person or persons,

other than *bona fide* representatives of the Press.

(3) The Court may, if it considers that it is in the interests of justice to do so, make an order prohibiting the publication or broadcast of—

- (a) any evidence given or referred to at a hearing of an application for a re-trial order, or  
 (b) any matter identifying or having the effect of identifying any person who is the subject of an application for a re-trial order, or any other person connected with the re-trial for which an order is sought under *section 8* or *9*.

(4) An order under *subsection (3)* ceases to have effect (unless it specifies an earlier date)—

- (a) when there is no longer any step that could be taken which would lead to the person concerned being re-tried pursuant to a re-trial order, or  
 (b) where the person concerned is re-tried pursuant to a re-trial order, at the conclusion of the trial.

(5) (a) If any matter is published or broadcast in contravention of *subsection (3)*, the following persons, namely—

- (i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,  
 (ii) in the case of any other publication, the person who publishes it, and  
 (iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to

the programme corresponding to those of the editor of a newspaper,

shall be guilty of an offence.

- (b) A person guilty of an offence under *paragraph (a)* shall be liable—
- (i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or
- (ii) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.
- (c) Where an offence under *paragraph (a)* is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to, any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (d) Where the affairs of a body corporate are managed by its members, *paragraph (c)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(6) Nothing in this section shall affect the operation of any other enactment that imposes restrictions on the extent to which information relating to court proceedings may be published or broadcast.

Effect of re-trial order.

**13.—(1)** Where a person is ordered under *subsection (1)* or *(2)* of *section 10* to be re-tried for an offence, he or she may, notwithstanding any rule of law, be again indicted and tried and, if found guilty, sentenced for that offence.

(2) In a case to which *subsection (1)* relates, the Court may—

- (a) order that the person concerned be detained in custody or admitted to bail pending the re-trial on such terms as the Court thinks proper,
- (b) where the person concerned does not appear before the Court for the hearing and determination of the application, issue a warrant for his or her arrest.

(3) A legal aid (re-trial order) certificate which was granted in relation to the proceedings under *section 8* or *9* shall have effect as if it had been granted also in relation to the re-trial ordered in respect of that person.

(4) A person who was not granted a legal aid (re-trial order) certificate and who is the subject of a re-trial order may apply for a legal aid (trial on indictment) certificate and section 3 of the Act of 1962 shall, with any necessary modifications, apply to that application.

**14.—(1)** An appeal shall lie to the Supreme Court by the acquitted person or the Director from a determination of the Court under *subsection (1) or (2) of section 10* if that Court, the Attorney General or the Director certifies that the determination involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

Appeals on point of law to Supreme Court.

(2) The Supreme Court may, for the purposes of its decision on such an appeal, either—

- (a) remit the case to the Court to deal with, or
- (b) deal with it itself and for that purpose exercise any powers of that Court under this Part.

(3) Where an appeal has been made to the Supreme Court under *subsection (1)* and a legal aid (Supreme Court) certificate is granted under *subsection (4)*, or is deemed to have been granted under *subsection (5)* in respect of the person who is the subject of the appeal, he or she shall be entitled to free legal aid in the preparation and conduct of any argument that he or she wishes to make to that Court and to have a solicitor and counsel assigned to him or her for that purpose in the manner prescribed by regulations under section 10 of the Act of 1962.

(4) The acquitted person may, in relation to proceedings under this section apply for a legal aid (Supreme Court) certificate to the Supreme Court either—

- (a) by letter to the registrar of the Supreme Court setting out the facts of the case and the grounds of the application, or
- (b) to the Supreme Court itself,

and the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid.

(5) If a legal aid (re-trial order) certificate was granted under the Act of 1962 in respect of the person in relation to an application for a re-trial order, a legal aid (Supreme Court) certificate shall be deemed to have been granted in respect of him or her in relation to the proceedings under this section.

(6) *Section 12* of this Act shall, with any necessary modifications, apply to an appeal under this section as it applies to an application for a re-trial order.

### CHAPTER 3

#### *Approval of District Court for exercise of certain powers relating to persons acquitted of relevant offences*

**15.—(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

Certain powers may be used only in accordance with Act.

- (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).

(2) For the purposes of this section, a person who has been acquitted of a relevant offence in proceedings referred to in *subsection (1)* shall be deemed to also have been acquitted of any relevant offence in respect of which he or she could have been convicted in the proceedings concerned by virtue of the first-mentioned offence charged in the indictment, other than an offence for which he or she has been convicted.

(3) A member of the Garda Síochána shall not, either with or without the consent of a person referred to in *subsection (1)*, do any of the following in connection with the person's suspected participation in a relevant offence in respect of which that person was acquitted, except in so far as it is authorised in accordance with the provisions of this Act:

- (a) arrest and detain the person;
- (b) interview the person;
- (c) search the person or cause him or her to be searched;
- (d) photograph the person or cause him or her to be photographed;
- (e) take or cause to be taken, the person's fingerprints or palm prints;
- (f) take or cause to be taken from the person, a sample for the purposes of forensic testing;
- (g) seize and retain for testing or for use as evidence anything in the person's possession;
- (h) search a place owned or occupied, or partly owned or occupied by the person.

Arrest of person in respect of whom *section 15* applies may be authorised by District Court in certain circumstances.

**16.—(1)** A person in respect of whom *section 15* applies may be arrested again for a relevant offence in respect of which he or she has been acquitted in accordance with, and only in accordance with, this section.

(2) Subject to *subsection (3)*, a judge of the District Court who is satisfied—

- (a) by information on oath by a member of the Garda Síochána not below the rank of superintendent that the member concerned has information regarding a relevant offence in respect of which the person was acquitted which has come to the knowledge of the Garda Síochána only since the person's acquittal, and
- (b) that the information referred to in *paragraph (a)* is likely to reveal or confirm the existence of new and compelling

evidence in relation to the person's suspected participation in the relevant offence for which his or her arrest is sought,

may authorise the arrest of that person.

(3) A judge of the District Court may authorise the arrest of the person concerned in respect of, and only of, the relevant offence in respect of which the person was acquitted.

(4) A person arrested pursuant to this section—

(a) shall be taken forthwith to a Garda Station and may be detained there for such period or periods as is authorised under section 4 of the Act of 1984, and

(b) subject to this section, shall be dealt with as though he or she had been detained under that section.

(5) If—

(a) at any time during the detention of a person under this section there are no longer reasonable grounds for—

(i) suspecting that the person has committed the relevant offence in respect of which he or she was arrested under this section, or

(ii) believing that his or her detention is necessary for the proper investigation of the relevant offence,

or

(b) by reason of the expiry of the period or periods referred to in *subsection (4)(a)*,

the detention shall be terminated forthwith, and he or she shall without delay be released, unless his or her detention is authorised apart from this section.

(6) Subsections (5) and (5A) of section 4 and section 10 of the Act of 1984 shall not apply to a person arrested and detained under this section.

(7) Proceedings under this section shall be heard otherwise than in public.

(8) This section shall not apply to a relevant offence in respect of which a person was the subject of a special verdict under section 5 of the Criminal Law (Insanity) Act 2006.

(9) This section is without prejudice to the power of the Court to issue a warrant for the arrest of a person in respect of whom a retrial order has been made under *subsection (1) of section 10*.

**17.—(1)** A person in respect of whom *section 15* applies who is detained in a prison or a children detention school may be arrested again for a relevant offence in respect of which he or she has been acquitted in accordance with, and only in accordance with, this section.

Arrest in certain circumstances of person in respect of whom *section 15* applies where person is in prison etc.

(2) Subject to *subsection (3)*, a judge of the District Court who is satisfied—

- (a) by information on oath by a member of the Garda Síochána not below the rank of superintendent that the member concerned has information regarding a relevant offence in respect of which the person was acquitted which has come to the knowledge of the Garda Síochána only since the person's acquittal, and
- (b) that the information referred to in *paragraph (a)* is likely to reveal or confirm the existence of new and compelling evidence in relation to the person's suspected participation in the relevant offence for which his or her arrest is sought,

may authorise the arrest of that person.

(3) A judge of the District Court may authorise the arrest of the person concerned in respect of, and only of, the relevant offence for which the person was acquitted.

(4) A person arrested pursuant to this section—

- (a) shall be taken forthwith to a Garda Station and may, subject to *subsection (6)*, be detained there for such period or periods as is authorised under section 4 of the Act of 1984, and
- (b) subject to this section, shall be dealt with as though he or she had been detained under that section.

(5) Subsections (4), (5) and (5A) of section 4 and section 10 of the Act of 1984 shall not apply to a person arrested and detained under this section.

(6) If at any time during the detention of a person under this section there are no longer reasonable grounds for—

- (a) suspecting that the person has committed the relevant offence in respect of which he or she was arrested under this section, or
- (b) believing that his or her detention is necessary for the proper investigation of the relevant offence,

the detention shall be terminated.

(7) On termination of the detention in accordance with *subsection (6)* or by reason of the expiry of the period or periods referred to in *subsection (4)(a)*, the member of the Garda Síochána in charge of the Garda Station where the person is detained shall transfer him or her, or cause him or her to be transferred back to the governor of the prison or, as the case may be, the Director of the children detention school where the person was detained at the time of the arrest under this section.

(8) Proceedings under this section shall be heard otherwise than in public.

(9) This section shall not apply to a relevant offence in respect of which a person was the subject of a special verdict under section 5 of the Criminal Law (Insanity) Act 2006.

(10) Nothing in this section shall affect the power of the Court to issue a warrant for the arrest of a person in respect of whom an order has been made under *subsection (1) of section 10*.

**18.—(1)** A place that is owned or occupied, or partly owned or occupied by a person in respect of whom *section 15* applies may be searched in connection with a relevant offence in respect of which he or she has been acquitted in accordance with, and only in accordance with, this section.

Search warrant in aid of investigation relating to relevant offences may be authorised by District Court in certain circumstances.

(2) A judge of the District Court who is satisfied—

- (a) by information on oath by a member of the Garda Síochána not below the rank of superintendent that the member concerned has information regarding a relevant offence in respect of which the person was acquitted which has come to the knowledge of the Garda Síochána since the person's acquittal,
- (b) that there are reasonable grounds for suspecting that evidence of, or relating to, the matters referred to in *paragraph (a)* is to be found in a place owned or occupied or partly owned or occupied by the person concerned,
- (c) that the information referred to in *paragraph (a)* is likely to reveal or confirm the existence of new and compelling evidence in relation to the person's suspected participation in the relevant offence concerned,

may issue a warrant for the search of that place and any persons found at that place.

(3) A search warrant under this section shall be expressed, and shall operate, to authorise a named member, accompanied by such other members or persons or both as the member thinks necessary—

- (a) to enter, at any time or times within one week of the date of issue of the warrant, on production if so requested of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,
- (b) to search it and any persons found at that place, and
- (c) to seize anything found at that place, or anything found in the possession of a person present at that place at the time of the search, that the member reasonably believes to be evidence of, or relating to, the commission of the relevant offence.

(4) A member acting under the authority of a search warrant under this section may—

- (a) 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,
- (b) arrest without warrant any person who—
  - (i) obstructs or attempts to obstruct the member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(5) A person who obstructs or attempts to obstruct a member acting under the authority of a search warrant under this section, who fails to comply with a requirement under *subsection (4)(a)*, or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(6) Proceedings under this section shall be heard otherwise than in public.

(7) This section shall not apply to a relevant offence in respect of which a person was the subject of a special verdict under section 5 of the Criminal Law (Insanity) Act 2006.

(8) Nothing in this section shall affect the operation of section 7 of the Criminal Justice Act 2006.

#### CHAPTER 4

##### *Miscellaneous*

Admissibility of evidence in proceedings under Part.

**19.—**(1) A failure on the part of a member of the Garda Síochána to observe any provision of this Part shall not of itself render that member liable to any criminal or civil proceedings or (without prejudice to the power of the court to exclude evidence at its discretion) shall not of itself affect the admissibility of any evidence obtained otherwise than in accordance with this Part.

(2) A failure on the part of any member of the Garda Síochána to observe any provision of this Part shall render that member liable to disciplinary proceedings.

Other appeals or review rights not affected.

**20.—**Nothing in this Part shall affect any right of appeal or review provided by this Act or any other enactment or rule of law.

Application of section 6 of Prosecution of Offences Act 1974.

**21.—**Section 6 of the Prosecution of Offences Act 1974 shall, with any necessary modifications, apply to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this Part as it applies to such communications made for the purposes of making a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

Rules of court and expeditious hearings.

**22.—**Rules of court may make provision for the expeditious hearing of—

(a) proceedings under this Part, and

(b) re-trials ordered under *section 10*.



## PART 4

## APPEALS AND MATTERS RELATING TO APPEALS

## CHAPTER 1

*With prejudice prosecution appeals*

**23.**—(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.

Appeals by Director etc., in certain criminal proceedings.

(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.

(4) An appeal under this section shall be made on notice to the person who is the subject of the appeal within 28 days, or such longer period not exceeding 56 days as the Supreme Court may, on application to it in that behalf, determine, from the day on which the person was acquitted or the conviction was quashed, as the case may be.

(5) Where a person fails to appear before the Supreme Court in respect of the appeal, the Court, if it is satisfied that it is, in all the circumstances, in the interests of justice to do so, may proceed to hear and determine the appeal in the absence of the person concerned.

(6) For the purposes of considering an appeal under this section the Supreme Court shall hear argument—

- (a) by, or by counsel on behalf of, the Director, or as the case may be, the Attorney General,

- (b) by the person who is the subject of the appeal or by counsel on his or her behalf, and
- (c) if counsel are assigned under *subsection (7)*, by such counsel.

(7) The Supreme Court shall assign counsel to argue in support of 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 if—

- (a) the person who is the subject of the appeal does not wish to be represented or heard under *subsection (6)(b)*, or
- (b) notwithstanding the fact that the person concerned exercises his or her right to be represented or heard under *subsection (6)(b)*, the Court considers it desirable in the public interest to do so.

(8) Where an appeal has been made to the Supreme Court under this section and a legal aid (Supreme Court) certificate is granted under *subsection (9)*, or is deemed to have been granted under *subsection (10)*, in respect of the person who is the subject of the appeal he or she shall be entitled to free legal aid in the preparation and conduct of any argument that he or she wishes to make to the Supreme Court and to have a solicitor and counsel assigned to him or her for that purpose in the manner prescribed by regulations under section 10 of the Act of 1962.

(9) The person may, in relation to proceedings under this section apply for a legal aid (Supreme Court) certificate to the Supreme Court either—

- (a) by letter to the registrar of the Supreme Court setting out the facts of the case and the grounds of the application, or
- (b) to the Supreme Court itself,

and the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid.

(10) If a legal aid (trial on indictment) certificate was granted under the Act of 1962 in respect of the person concerned in relation to the earlier proceedings in respect of the offence concerned, a legal aid (Supreme Court) certificate shall be deemed to have been granted in respect of him or her in relation to the proceedings under this section.

(11) 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—
  - (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 (12)*, 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.

(12) In determining whether to make an order under *subsection (11)(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.

(13) (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.

(14) 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.

**24.**—No appeal shall lie under *section 23* from an acquittal following a re-trial ordered under *subsection (1)* or *(2)* of *section 10*.

No appeal in certain circumstances.

**25.**—(1) Subject to this section, a proceeding under *section 23* shall be conducted in open court.

Orders to safeguard fairness of re-trial.

(2) Where the Supreme Court is conducting a proceeding under *section 23* and is satisfied that it is in the interests of justice to do so, it may exclude from the court during the proceeding—

- (a) the public or any portion of the public, or
- (b) any particular person or persons,

other than *bona fide* representatives of the Press.

(3) The Supreme Court may, if it considers that it is in the interests of justice to do so, make an order prohibiting the publication or broadcast of—

- (a) any evidence given or referred to during the proceeding,  
or
  - (b) any matter identifying or having the effect of identifying any person who is the subject of an appeal under *section 23*, or any other person connected with the re-trial for which an order is sought.
- (4) An order under *subsection (3)* ceases to have effect (unless it specifies an earlier date)—
- (a) when there is no longer any step that could be taken which would lead to the person concerned being re-tried pursuant to an order under *section 23*, or
  - (b) where the person concerned is re-tried pursuant to an order under *section 23*, at the conclusion of the trial.
- (5) (a) If any matter is published or broadcast in contravention of *subsection (3)*, the following persons, namely—
- (i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
  - (ii) in the case of any other publication, the person who publishes it, and
  - (iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,
- shall be guilty of an offence.
- (b) A person guilty of an offence under *paragraph (a)* shall be liable—
- (i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or
  - (ii) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.
- (c) Where an offence under *paragraph (a)* is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to, any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (d) Where the affairs of a body corporate are managed by its members, *paragraph (c)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(6) Nothing in this section shall affect the operation of any other enactment that imposes restrictions on the extent to which information relating to court proceedings may be published or broadcast.

**26.**—(1) Where a person is ordered under *section 23* to be re-tried for an offence he or she may, notwithstanding any rule of law, be again indicted and tried and, if found guilty, sentenced for that offence.

Order for re-trial following appeal under *section 23*.

(2) In a case to which *subsection (1)* relates, the Supreme Court may—

- (a) order that the person concerned be detained in custody or admitted to bail pending the re-trial on such terms as that Court thinks proper,
- (b) where the person does not appear before the Court for the hearing and determination of the appeal, issue a warrant for his or her arrest.

(3) A legal aid (Supreme Court) certificate which was granted in relation to the proceedings under *section 23*, or in the case of a person who waived his or her right to be represented in respect of those proceedings and a legal aid (trial on indictment) certificate was granted to him or her in respect of the original proceedings, the legal aid (trial on indictment) certificate, shall have effect as if it had been granted also in relation to a re-trial ordered under *section 23*.

**27.**—Subsection 16 of section 3 of the Criminal Justice Act 1994 is amended, in paragraph (f), by the substitution of the following subparagraph for subparagraph (i):

Amendment of section 3 of Criminal Justice Act 1994.

- “(i) (I) when the defendant is acquitted on all counts, or
- (II) where the provisions of *section 23* of the *Criminal Procedure Act 2010* apply to the proceedings—
- (A) when the time period for an appeal under that section has expired and no appeal has been made,
  - (B) where an appeal has been made but no re-trial is ordered, at the conclusion of the appeal proceedings under the section, or
  - (C) where a re-trial has been ordered, at the conclusion of the re-trial;”.

**28.**—Nothing in this Chapter shall affect any right of appeal or review provided by this Act or any other enactment or rule of law.

Other appeals or review rights not affected.

**29.**—Section 6 of the Prosecution of Offences Act 1974 shall, with any necessary modifications, apply to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to a proceeding under this Chapter

Application of section 6 of Prosecution of Offences Act 1974.

as it applies to such communications made for the purposes of making a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

Rules of court and expeditious hearings.

**30.**—Rules of court may make provision for the expeditious hearing of proceedings under *section 23* or re-trials ordered under that section.

## CHAPTER 2

### *Miscellaneous matters relating to appeals*

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 in relation to which that Court—

(a) did not make a determination, or

(b) made a determination against him or her.

(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

(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.”.

**32.**—The Offences Against the State Act 1939 is amended, in section 44, by the substitution of the following subsection for subsection (1):

Amendment of section 44 of Offences Against the State Act 1939.

“(1) A person convicted by a Special Criminal Court of any offence or sentenced by a Special Criminal Court to suffer any punishment may appeal to the Court of Criminal Appeal from such conviction or sentence.”.

## PART 5

### MISCELLANEOUS PROVISIONS

#### CHAPTER 1

#### *Giving of Evidence*

**33.**—The Criminal Justice (Evidence) Act 1924 is amended—

Amendment of Criminal Justice (Evidence) Act 1924.

(a) in section (1)(f)—

(i) in subparagraph (ii)—

(I) by the substitution of “questions of any witness” for “questions for the witnesses for the prosecution”, and

(II) by the substitution of “person in respect of whom the offence was alleged to have been committed” for “prosecutor”,

and

(ii) by the insertion of the following subparagraph after subparagraph (iii):

“(iii*a*) the person has personally or by the person’s advocate asked questions of any witness for the purpose of making, or the conduct of the defence is such as to involve, imputations on the character of a person in respect of whom the offence was alleged to have been committed and who is deceased or is so incapacitated as to be unable to give evidence; or”,

and

(b) by the insertion of the following section after section 1:

“Evidence of character.

1A.—Where a person charged with an offence intends to adduce evidence, personally or by the person’s advocate, of a witness, including the person, that would involve imputations on the character of a prosecution witness or a person in respect of whom the offence is alleged to have been committed and who is either deceased or so incapacitated as to be unable to give evidence, or evidence of the good character of the person—

(a) the person may do so only if he or she—

(i) has given, either personally or by his or her advocate, at least 7 days’ notice to the prosecution of that intention, or

(ii) has applied to the court, citing the reasons why it is not possible to give the notice, and been granted leave to do so,

and

(b) notwithstanding section 1(*f*), the person may be called as a witness and be asked, and the prosecution may ask any other witness, questions that—

(i) would show that the person has been convicted of any offence other than the one wherewith he or she is then



charged, or is of bad character, or

- (ii) would show that the person in respect of whom the offence was alleged to have been committed is of good character.”.

**34.—(1)** An accused shall not call an expert witness or adduce expert evidence unless leave to do so has been granted under this section. Expert evidence adduced by defence.

(2) Where the defence intends to call an expert witness or adduce expert evidence, whether or not in response to such evidence presented by the prosecution, notice of the intention shall be given to the prosecution at least 10 days prior to the scheduled date of the start of the trial.

(3) A notice under *subsection (2)* shall be in writing and shall include—

- (a) the name and address of the expert witness, and
- (b) any report prepared by the expert witness concerning a matter relevant to the case, including details of any analysis carried out by or on behalf of, or relied upon by, the expert witness, or a summary of the findings of the expert witness.

(4) The court may grant leave to call an expert witness or adduce expert evidence even if no report or summary of the findings are included as required by *subsection (3)(b)*, if the court is satisfied that the accused took all reasonable steps to secure the report or summary before giving the notice.

(5) The court shall grant leave under this section to call an expert witness or adduce expert evidence, on application by the defence, if it is satisfied that the expert evidence to be adduced satisfies the requirements of any enactment or rule of law relating to evidence and that—

- (a) *subsections (2) and (3)* have been complied with,
- (b) where notice was not given at least 10 days prior to the scheduled date of the start of the trial, it would not, in all the circumstances of the case, have been reasonably possible for the defence to have done so, or
- (c) where the prosecution has adduced expert evidence, a matter arose from that expert’s testimony that was not reasonably possible for the defence to have anticipated and it would be in the interests of justice for that matter to be further examined in order to establish its relevance to the case.

(6) The prosecution shall be heard in an application under *subsection (4) or (5)*.

(7) A notice required by this section to be given to the prosecution may be given by delivering it to the prosecutor, or by leaving

it at his or her office or by sending it by registered post to his or her office.

(8) Where the court grants leave under this section, the prosecution shall be given a reasonable opportunity to consider the report or summary before the expert witness gives the evidence or the evidence is otherwise adduced.

(9) In this section—

“expert evidence” means evidence of fact or opinion given by an expert witness, and

“expert witness” means a person who appears to the court to possess the appropriate qualifications or experience about the matter to which the witness’s evidence relates.

Return or disposal of property to be used as evidence.

**35.—(1)** This section applies where property that is to be entered in evidence in a criminal trial is to be—

- (a) returned to its owner, or
- (b) disposed of,

before the trial begins.

(2) Where the prosecution proposes to dispose of property that is to be entered in evidence or return it to its owner before the scheduled date of the start of the trial, the prosecution shall serve a notice under this section (the “prosecution notice”) on the accused at any time that is at least 23 days prior to that date.

(3) The prosecution notice shall contain a description of the property in sufficient detail to identify it and a statement as to the relevance of the property to the proceedings, together with—

- (a) one or more photographs of the property, and
- (b) any report that the prosecution proposes to enter in evidence arising from the analysis of the property, including analysis of any materials found in or on the property (the “prosecution report of evidence”).

(4) Not later than 7 days after service of the prosecution notice under *subsection (2)*, the defence shall serve on the prosecution a notice in writing (the “defence notice”) that indicates one of the following:

- (a) that the defence accepts the prosecution notice and agrees to the return or disposal of the property;
- (b) that the defence wishes to provide to the prosecution a report that conforms with *subsection (3)* (the “defence report of evidence”);
- (c) that the defence requires the property to be available as an exhibit at the trial.

(5) Where the defence notice served under *subsection (4)* is a notice mentioned in *paragraph (b)* of that subsection, then, notwithstanding *section 34*, the defence shall, not later than 7 days after

service of that notice, serve the defence report of evidence on the prosecution.

(6) Where a defence report of evidence is served on the prosecution under *subsection (5)*, the prosecution shall, not later than 3 days prior to the scheduled date of the start of the trial, provide to the defence and the court a notice stating whether it accepts or rejects that notice (the “prosecution notice of reply”).

(7) If the defence notice under *subsection (4)* is made under *paragraph (a)* of that subsection or is made under *paragraph (b)* of that subsection and a defence report of evidence is served under *subsection (5)* and accepted under *subsection (6)*, then—

- (a) a member of the Garda Síochána not below the rank of inspector shall, on receipt by him or her of a copy of the notice referred to in *subsection (4)* or (6), cause the property to be returned or disposed of, as the case may be,
- (b) the member referred to in *paragraph (a)* shall keep a written record of the return or disposal of the property, and
- (c) where the property is returned to its owner, the owner shall acknowledge in writing the receipt of the property.

(8) The following rules apply to admissibility of evidence:

- (a) where *subsection (4)(a)* applies, the prosecution report of evidence is proof of the facts stated therein, unless the contrary is shown;
- (b) where *subsection (4)(b)* applies and a defence report of evidence is served on the prosecution under *subsection (5)* and accepted under *subsection (6)*, the defence report of evidence is proof of the facts stated therein, unless the contrary is shown;
- (c) where *subsection (4)(c)* applies, the property may be admitted as evidence in any trial in which the property is otherwise admissible;
- (d) in any other case, a report prepared under *subsection (3)* or (5) may be admitted as evidence in any trial in which the property is otherwise admissible.

(9) Any person who prepares information contained in a report under *subsection (3)* or (5) may be called to give evidence in relation to all or any part of the report, and may be cross-examined on that evidence.

## CHAPTER 2

### *Miscellaneous amendments*

**36.**—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”.

Amendment of section 22 of Courts Act 1991.

**37.**—The Act of 1967 is amended—

Amendment of Act of 1967.

- (a) in section 4, by the substitution in subsection (2), of “instituted or continued except by the Attorney General” for “instituted or continued except by, or on behalf or with the consent of, the Attorney General”,
- (b) in section 4B, by the substitution of the following subsection for subsection (1):

“(1) (a) Subject to subsection (3), the prosecutor shall cause the documents specified in paragraph (b) to be served on the accused or his or her solicitor (if any) not later than 42 days from the date on which—

- (i) the accused, on being informed by the District Court of his or her right to be tried by a jury, objects to being tried summarily or the prosecutor informs the court that he or she does not consent to the person being tried summarily for the offence concerned or,
- (ii) in the case of an offence in respect of which the prosecutor may elect to prosecute either summarily or on indictment, the prosecutor elects to try the offence on indictment, or
- (iii) the District Court determines that the facts alleged do not constitute a minor offence and are not fit to be tried summarily.

(b) The documents referred to in paragraph (a) are:

- (i) a statement of the charges against the accused;
- (ii) a copy of any sworn information in writing upon which the proceedings were initiated;
- (iii) a list of the witnesses the prosecutor proposes to call at the trial;
- (iv) a statement of the evidence that is expected to be given by each of them;
- (v) a copy of any document containing information which it is proposed to give in evidence by virtue of Part II of the Criminal Evidence Act 1992;
- (vi) where appropriate, a copy of a certificate under section 6(1) of that Act;
- (vii) a list of the exhibits (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.”.

**38.**—The First Schedule to the Criminal Justice Act 1951 is amended by the insertion of the following reference:

Amendment to  
First Schedule to  
Criminal Justice  
Act 1951.

“26. The offence at common law of breach of the peace.”.

Section 7.

## SCHEDULE

### RELEVANT OFFENCES

#### *Common law offences*

1. Murder (including murder to which section 3 of the Criminal Justice Act 1990 applies).

2. Manslaughter.

3. Treason.

4. Rape.

#### *Genocide, crimes against humanity, war crimes and ancillary offences*

5. An offence under sections 7 and 8 of the International Criminal Court Act 2006.

#### *Torture*

6. An offence under any of the following provisions of the Criminal Justice (United Nations Convention against Torture) Act 2000:

(a) section 2(1) (offence of torture by a public official);

(b) section 2(2) (offence of torture instigated by a public official);

(c) section 3(a) (attempt or conspiracy to commit torture);

(d) section 3(b) (obstructing prosecution of another).

#### *Sexual offences*

7. Any offence under section 3 (aggravated sexual assault) and section 4 (rape) of the Criminal Law (Rape) (Amendment) Act 1990.

8. Any offence under section 2 of the Criminal Law (Sexual Offences) Act 2006 (defilement of child under 15 years of age).

9. An offence under section 1 of the Punishment of Incest Act 1908 (incest by males).

#### *Offences against the person*

10. An offence under any of the following provisions of the Non-Fatal Offences Against the Person Act 1997:

(a) section 4 (causing serious harm);

(b) section 6(5) (syringe offences);

(c) section 8(2) (placing or abandoning syringe);

(d) section 15(1) (false imprisonment).

*Trafficking*

11. An offence under section 3(1) of the Child Trafficking and Pornography Act 1998 (trafficking, taking etc., for the purposes of sexual exploitation).

12. Any offence under section 2 (trafficking etc., of children) and section 4 (trafficking of persons other than children) of the Criminal Law (Human Trafficking) Act 2008.

*Offences against the State*

13. An offence under section 6 of the Offences Against the State (Amendment) Act 1998 (directing an unlawful organisation).

14. An offence under any of the following provisions of the Criminal Justice (Terrorist Offences) Act 2005:

- (a) section 9(1) (hostage taking);
- (b) section 9(2) (attempted hostage taking);
- (c) section 10(1) (terrorist bombing);
- (d) section 10(2) (terrorist bombing causing major economic loss);
- (e) section 10(3) (attempted bombing).

*Organised Crime*

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

*Drugs offences*

16. Any offence under sections 15(1) (possession of controlled drugs for unlawful sale or supply), 15A (offence relating to possession of drugs with value of £10,000 or more) and 15B (importation of controlled drugs in excess of certain value) of the Misuse of Drugs Act 1977.

*Firearms offences*

17. An offence under section 15 of the Firearms Act 1925 (possession of firearms with intent to endanger life).

18. An offence under section 27 of the Firearms Act 1964 (prohibition of use of firearms to resist arrest or aid escape).

*Explosives offences*

19. An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or damage property).

*Damaging property*

20. An offence of arson under section 2(1) or (3) or an offence under section 2(2) (whether arson or not) of the Criminal Damage Act 1991 (damaging of property).

*Robbery and burglary*

21. Any offence under section 13(1) (aggravated burglary) and section 14(1) (robbery) of the Criminal Justice (Theft and Fraud Offences) Act 2001.

*Air navigation offences*

22. An offence under section 11 of the Air Navigation and Transport Act 1973 (unlawful seizure of aircraft).

23. An offence under section 3(1) of the Air Navigation and Transport Act 1975 (unlawful acts against the safety of navigation).

*Maritime security offences*

24. An offence under section 2(1) of the Maritime Security Act 2004.

*Accomplices*

25. References in this Schedule to an offence include references to participation as an accomplice of a person who commits the offence.

*Attempts and conspiracy*

26. An offence of attempting or conspiring to commit any offence mentioned in a preceding paragraph of this Schedule.





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## CRIMINAL PROCEDURE ACT 2010

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### EXPLANATORY MEMORANDUM

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#### **Purposes of this Memorandum**

The contents of this Memorandum are for explanatory purposes and do not represent a legal interpretation of the Criminal Procedure Act 2010.

#### **Purposes of Act**

The main purposes of the Act are to:

- reform the law relating to victim impact evidence and, in particular, to extend the entitlement to make an oral statement (commonly called a victim impact statement) at a sentencing hearing to the family members of homicide victims;
- modify the rule against double jeopardy in order to allow a person who has been acquitted of an offence to be re-tried in circumstances where “new and compelling evidence” emerges or where the acquittal is tainted due, for example, to corruption or intimidation of witnesses or jurors or perjury;
- provide the Director of Public Prosecutions with a right of appeal to the Supreme Court on a “with prejudice” basis against an acquittal where the acquittal arises from (i) an erroneous ruling by the trial court on a point of law arising during the trial or from (ii) a decision by the Court of Criminal Appeal not to order a re-trial following the quashing of a conviction;
- provide for a number of miscellaneous procedural amendments to defence appeal provisions;
- reform of the law relating to character evidence where the defendant raises issues concerning his or her own character or the character of deceased or incapacitated victims;
- require the defence to notify the prosecution in advance of the intention to adduce expert evidence;
- allow for the return or disposal of property that is evidence in a trial;
- amend section 22 of the Courts Act 1991 in relation to the issuing of bench warrants;
- amend the Criminal Procedure Act 1967 in relation to (i) the time limits for the service of a book of evidence (ii) the law on the continuation of remands in custody and (iii) the term “prosecutor”;
- add the common law offence of breach of the peace to the First Schedule of the Criminal Justice Act 1951.

Many of the above matters were the subject of recommendations in the final report of the Balance in the Criminal Law Review Group (March, 2007 — available at [www.justice.ie](http://www.justice.ie)).

## **Provisions of Act**

### **Part 1 — Preliminary and general**

Section 1 provides the short title of the Act as well as the commencement provisions.

Section 2 provides the definitions as well as a provision that ensures that the Act's provisions on retrials after acquittals apply to acquittals by a Special Criminal Court on the same basis as they apply to courts sitting with a jury.

Section 3 is a standard provision concerning any expenses incurred under the Act.

### **Part 2 — Impact of crime on victim**

Sections 4, 5 and 6 reform the law relating to victim impact evidence.

Section 4 amends the Criminal Justice Act 1993 by the substitution of section 5 of that Act. At present the sentencing court is only required to take into account (and receive evidence where necessary) of the effect of the offence on the direct victim. This evidence is usually in the form of a written report by a medical person. The amendment requires a court, where the direct victim, as a result of the offence, has died, is ill or otherwise incapacitated, to take into account the effect of the offence not only on the person directly concerned but also on the family members.

It is also the case at present that the entitlement to give oral evidence to a court (commonly called a victim impact statement) is limited to the direct victim. The amendment extends this entitlement to the family members of victims who have died, are ill or are incapacitated.

In the case of a child under the age of 14 years provision is made for the child or the parent/guardian to make the victim impact statement on their behalf.

In the case of an adult person with a mental disorder (not resulting from the offence concerned) provision is made for that person to make a statement or a family member to do so on their behalf. In the case of a person with a mental disorder (not resulting from the offence concerned) who is a child (i.e. aged less than 18 years), the victim impact statement may be made by the child or, on his / her behalf, by his or her parent/guardian.

A person convicted of the offence concerned cannot be regarded as a "family member" for the purposes of making a victim impact statement.

The absence of a victim impact statement shall not give rise to an inference that the offence had little or no impact on the direct victim or the family members, as appropriate.

The range of offences in respect of which the victim impact evidence provisions in this section applies has been expanded to include any offence under the Non-fatal Offences Against the Person Act 1997. Many of the offences under the 1997 Act were already within the existing range of offences, but since a number of offences,

such as harassment under section 10 and false imprisonment under section 15, do not necessarily involve the use of physical violence or the threat of violence, they did not give rise to an entitlement to make a statement. Such offences can, however, cause substantial emotional distress to the victim. It is for this reason that offences under the 1997 Act have been added.

Provision is made for the court, in the interests of justice, to prohibit the broadcasting or publication of all or part of the victim impact statement. Breach of such a prohibition is a criminal offence punishable on summary conviction by a fine not exceeding €5,000 and/or imprisonment for a term not exceeding 12 months, and on indictment by a fine not exceeding €50,000 and/or imprisonment for a term not exceeding 3 years.

Section 5 amends the 1993 Act by inserting a new section 5A. The purpose of this section is to allow a child, a person with a mental disorder, or any other person with the leave of the court to make a victim impact statement by means of a live television link, thereby removing the requirement that the person be present in the court.

Section 6 amends the 1993 Act by inserting a new section 5B. The purpose of this is to make provision for any questioning of a child or a person with a mental disorder in relation to his or her victim impact statement to be done via an intermediary i.e. a person appointed by the court to act in that capacity. The court may appoint an intermediary where the age or the mental condition of a child or a person with a mental disorder is such that it is in the interests of justice that the questions be put through an intermediary.

### **Part 3 — Exceptions to rule against double jeopardy**

The rule against double jeopardy provides that no person may be put at risk of being punished twice for the same offence. This Part modifies the rule by allowing the Director of Public Prosecutions (the Director) to make an application to the Court of Criminal Appeal for a re-trial order in respect of a person who is acquitted of an offence:

- on the grounds of “new and compelling evidence” which emerges post-acquittal; or
- where the acquitted person or another person has been convicted of an offence against the administration of justice in relation to the original proceedings (a “tainted acquittal”).

Where the ground for the re-trial application is “new and compelling evidence” the scope of the power is restricted to the offences (in this Part referred to as “relevant offences”) specified in the schedule. The relevant offences carry a mandatory or maximum sentence of life imprisonment subject to a limited exception in the case of the offences under the International Criminal Court Act 2006. In the case of tainted acquittals the scope is wider — it applies in the case of all acquittals following a trial on indictment.

Section 7 provides the necessary definitions for Part 3. Five definitions are of particular importance:

“Court” for the purposes of this Part is the Court of Criminal Appeal i.e. an application for a re-trial order is to be made to that Court.

“compelling evidence” relates to the re-trial application procedure under section 9. It is defined as evidence which is reliable, of significant probative value and is such that a jury (a hypothetical

future jury) might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned.

“new and compelling evidence” relates to the re-trial application procedure under section 8. It is defined as evidence which: was not presented by the prosecution at the proceedings in respect of which the person was acquitted (nor in related appeal proceedings), and could not with the exercise of due diligence, have been presented during those proceedings; is reliable, of significant probative value and is such that when taken together with all the other evidence adduced (no matter by whom) 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. The reference to “a jury” refers to a hypothetical future jury.

“offence against the administration of justice” is defined as an offence under section 1 of the Prevention of Corruption Act 1906 (i.e. the offence of corruption in so far as the offence related to criminal proceedings), an offence under section 41 of the Criminal Justice Act 1999 (intimidation etc. of witnesses, jurors and others), the common law offences of attempting to pervert the course of justice and perjury, and conspiring or inciting another to commit any of the foregoing offences.

The definition of “relevant offence” relates only to an application for a re-trial on the basis of “new and compelling evidence”. It is defined as an offence specified in the schedule to the Act. The offences listed in the schedule carry a mandatory or maximum sentence of imprisonment for life with the exception of offences under sections 7 and 8 of the International Criminal Court Act 2006 (genocide, crimes against humanity, war crimes and ancillary offences). These offences, if they involve murder, or are of extreme gravity attract a mandatory or maximum life sentence respectively. In all other cases imprisonment for a term not exceeding 30 years applies.

Section 8 empowers the Director to make an application for a re-trial order to the Court of Criminal Appeal in respect of a person who has been acquitted of a relevant offence following a trial on indictment or in related appeal proceedings. The section has prospective application only i.e. it applies to persons tried and acquitted of a relevant offence on or after the commencement of the section.

A person who has been acquitted of a relevant offence shall be deemed to be also acquitted of any relevant offence with which he or she could have been convicted in the proceedings concerned by virtue of the first mentioned offence being charged in the indictment (other than an offence for which he or she has been convicted) e.g. a person acquitted on a charge of common law rape will also be deemed to be acquitted of aggravated sexual assault under section 3 and rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 (if he or she was not convicted of either of these offences).

A person who is the subject of a special verdict under section 5 of the Criminal Law (Insanity) Act 2006 (a verdict of not guilty by reason of insanity) is excluded from the application of the section in so far as the offence in respect of which the special verdict was returned is concerned.

The Director may make an application for a re-trial order only where it appears to him or her that there is “new and compelling evidence” and that such an application is in the public interest. The

application must be on notice to the acquitted person concerned. However, the hearing may proceed notwithstanding the acquitted person's failure to appear if the court is satisfied that it is, in all the circumstances, in the interests of justice that the application should be heard and determined. Having regard to the person's status as an acquitted person, he or she will remain at liberty (other than where he or she is in prison in connection with another offence) until such time as a re-trial order (if any) is made by the court under section 10 and the court makes a decision under section 13 as to whether or not the person should be remanded in custody or on bail pending the hearing of the re-trial.

The Director may avail of section 8 on only one occasion in relation to an acquitted person's suspected participation in a particular relevant offence.

*Section 9* empowers the Director to make an application for a re-trial order to the Court of Criminal Appeal in respect of a person who: has been acquitted of an offence following a trial on indictment or in related appeal proceedings, and that person or another person has been convicted of an offence against the administration of justice relating to the proceedings which resulted in the acquittal. The section has prospective application only i.e. it applies to persons tried on indictment and acquitted on or after the commencement of the section.

A person who has been acquitted of an offence shall be deemed to be also acquitted of any offence with which he or she could have been convicted in the proceedings concerned by virtue of the first mentioned offence being charged in the indictment (other than an offence for which he or she has been convicted) e.g. a person acquitted on a charge of common law rape will also be deemed to be acquitted of aggravated sexual assault under section 3 and rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 (if he or she was not convicted of either of these offences).

The Director may make an application for a re-trial order only where it appears to him or her that there is "compelling evidence" against the acquitted person and that such an application is in the public interest. An application may not be made where appeal proceedings are pending in relation to the conviction for the offence against the administration of justice. The application must be on notice to the acquitted person concerned. However, the hearing may proceed notwithstanding the acquitted person's failure to appear if the court is satisfied that it is in all the circumstances in the interests of justice that the application should be heard and determined. Having regard to the person's status as an acquitted person, he or she will remain at liberty (other than where he or she is in prison in connection with another offence) until such time as a re-trial order (if any) is made by the court under section 10 and the court makes a decision under section 13 as to whether or not the person should be remanded in custody or on bail pending the hearing of the re-trial.

The Director may avail of section 9 on only one occasion in relation to an acquitted person's suspected participation in a particular offence.

*Section 10* deals with the court hearing and determination of an application under section 8 or 9.

In the case of an application for a re-trial order under section 8 (an application on the basis of "new and compelling evidence") the court shall grant the order where it is satisfied that there is "new and

compelling evidence” in relation to the acquitted person concerned and that having considered the matters set out in subsection (3) (viz. whether or not it is likely that any re-trial could be conducted fairly, the amount of time that has passed since the commission of the offence concerned, the interests of any victim of the offence concerned and any other matters which the court considers relevant) it is in all the circumstances in the interests of justice to grant the order.

In the case of an application for a re-trial order under section 9 (an application on the basis of a tainted acquittal) the court shall grant the order where it is satisfied that: there is “compelling evidence” against the acquitted person, and having considered the matters set out in subsection (3) that it is in all the circumstances in the interests of justice to grant the order.

In either case, if a re-trial order is made, the effect of the order will be to quash the acquittal and direct that the person be re-tried for the offence concerned subject to such conditions and directions (including conditions and directions as to placing a stay on the re-trial) as the court considers necessary to safeguard the fairness of the re-trial.

Provision is made for the court when hearing an application for a re-trial order to make a range of orders (including production orders and witness orders) and to receive evidence tendered by witnesses such as it considers necessary for doing justice in the application before it.

The admissibility of evidence at a hearing under this section is not dependent on whether the evidence would have been admissible under the laws of evidence pertaining at the time of the original proceedings.

A re-trial ordered under this section is to take place as soon as practicable subject to any conditions or directions as to placing a stay on the re-trial.

Section 11 amends the Criminal Justice (Legal Aid) Act 1962 in order to make provision for legal aid for a person in respect of whom an application has been made under section 8 or 9 of this Act. The section inserts a new section 6C in the 1962 Act and makes a number of other amendments consequential on this new section. New section 6C provides that a person who is the subject of an application for a re-trial order is entitled to a legal aid (re-trial order) certificate for the purposes of the preparation and conduct of his or her case in relation to the application and is entitled to have a solicitor and counsel assigned to him or her for that purpose. As is the case with other legal aid certificates the decision to grant the application for legal aid is a matter for the court and is based on the means of the person and consideration of the requirements of the interests of justice.

Section 12 gives the court discretion to make orders relating to attendance at the hearing and the publication and broadcast of matters relating to the hearing in order to safeguard the fairness of any re-trial ordered under section 10. Although the hearings are to be in open court, the court may, in the interests of justice, exclude the public or a portion of the public or particular persons from the hearings.

The court may not exclude *bona fide* members of the Press. However, the court may impose publication and broadcast

restrictions in relation to any evidence tendered at the hearing or any matter that would identify or have the effect of identifying the person who is the subject of the application or any other person connected with the re-trial for which the order is sought. Breach of such an order is an offence and punishable on summary conviction by a fine not exceeding €5,000 and/or imprisonment for a term not exceeding 12 months and on indictment by a fine not exceeding €50,000 and/or imprisonment for a term not exceeding 3 years. An order prohibiting the publication or broadcast of certain matters relating to the hearing shall cease once any re-trial ordered has concluded or once there is no longer a possibility of the person being the subject of a re-trial order in connection with the offence concerned.

*Section 13* sets out the effect of a re-trial order made under section 10. The effect is that the person may be indicted and re-tried and, if found guilty, sentenced for the offence concerned. Pending the re-trial the court may remand the person in custody or on bail as it thinks proper, or in the case of a person who did not appear before the court for the hearing and determination of the application issue a warrant for his or her arrest. Provision is made for legal aid for the re-trial.

*Section 14* provides that the Director or the acquitted person may appeal a decision made by the Court of Criminal Appeal on an application under section 10 for a re-trial order to the Supreme Court on the basis of a certificate from the Court of Criminal Appeal, the Director or the Attorney General stating that a point of law of exceptional public importance is involved and that it is desirable in the public interest that the appeal be taken to the Supreme Court. The Supreme Court may either remit the case to the Court of Criminal Appeal to deal with it having regard to the decision of the Supreme Court on the point of law or deal with the case itself i.e. make, or refuse to make, a re-trial order. Provision is made for legal aid for the acquitted person in respect of an appeal to the Supreme Court.

*Sections 15 to 18* provide that the Garda Síochána must obtain authorisation from a District Court judge prior to the exercise of certain powers in relation to an acquitted person in connection with an investigation into that person's suspected participation in a relevant offence of which the person has previously been acquitted. An application by the Director for a re-trial order on the basis of "new and compelling evidence" will in practice be preceded by a Garda investigation into that evidence to establish its reliability, substance and so forth. It will be necessary for the Gardaí to be able to exercise standard investigative powers, such as powers of arrest and detention, fingerprinting, taking of forensic samples and search powers in order to conduct its investigation into that new evidence. However, having regard to the status of the suspect as an acquitted person it is necessary to ensure that the exercise of those powers is subject to judicial oversight.

*Section 15* sets out the general principle that a person who comes within the scope of section 8 i.e. a person in respect of whom an application for a re-trial order may be sought by the Director on the basis of "new and compelling evidence" cannot be subjected to certain Garda powers (either with or without his or her consent) in relation to a relevant offence of which he or she has previously been acquitted except in accordance with the Act. The prohibited acts are those of arrest, detention, interviewing the person, searching the person or causing him or her to be searched, photographing the person or causing him or her to be photographed, taking or causing

to be taken the person's fingerprints or a forensic sample, seizing and retaining for testing or use in evidence anything in the person's possession or searching a place owned or occupied, or partly owned or occupied by the person.

*Section 16* sets out the procedure by which an arrest warrant may be sought from a District Court judge in respect of a person to whom section 15 applies. Before authorising the arrest the judge must be satisfied by information on oath by a senior Garda that the member concerned has information regarding the relevant offence which has come to the knowledge of the Garda Síochána since the person's acquittal and that the information is likely to reveal or confirm the existence of "new and compelling evidence" in relation to the acquitted person's suspected participation in the relevant offence for which his or her arrest is sought. A person arrested on such a warrant will be detained as if he or she had been detained under section 4 of the Criminal Justice Act 1984. The maximum period of detention permitted under that Act is 24 hours. A person in respect of whom a special verdict under section 5 of the Criminal Law (Insanity) Act 2006 (a verdict of not guilty by reason of insanity) was handed down may not be arrested under this section in relation to the offence in respect of which the special verdict was returned.

*Section 17* is similar to section 16 but concerns the procedure by which an arrest warrant may be sought from a District Court judge in respect of a person to whom section 15 applies who is in custody either awaiting trial or serving a sentence for another offence.

*Section 18* sets out the procedure by which a search warrant may be sought from a judge of the District Court in respect of a place owned or occupied, or partly owned or occupied by a person to whom section 15 applies in connection with an investigation into that person's suspected participation in the offence of which he or she has been acquitted. Before authorising the search warrant the judge must be satisfied by information on oath by a senior Garda that the member concerned has information regarding the relevant offence which has come to the knowledge of the Garda Síochána since the person's acquittal; that there are reasonable grounds for suspecting that evidence of or relating to that information is to be found at the place for which the warrant is sought and that the information is likely to reveal or confirm the existence of "new and compelling evidence" in relation to the acquitted person's suspected participation in the relevant offence for which his or her arrest is sought. This section does not apply in relation to a person in respect of whom a special verdict under section 5 of the Criminal Law (Insanity) Act 2006 was handed down in so far as the offence in respect of which that verdict was handed down is concerned.

*Section 19* provides that a failure by a member of the Garda Síochána to observe any provisions in this Part shall not of itself render that member liable to criminal or civil proceedings. However, it will render that member liable to disciplinary proceedings. The section also provides that a failure by a member to observe any provisions of the Part shall not of itself affect the admissibility of evidence obtained other than in accordance with the Act — the exclusion of evidence is a matter left to the discretion of the court.

*Section 20* clarifies that the provisions of Part 3 do not affect any right of appeal or review under the Act or under any other enactment or rule of law.

*Section 21* applies the prohibition contained in section 6 of the Prosecution of Offences Act 1974 on the making of communications



to certain persons, including the Director of Public Prosecutions, an acting Director or a member of the Garda Síochána for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings to decisions made under this Part.

Section 22 enables rules of court to be made concerning the expeditious hearing of applications under sections 8 and 9 and related appeals under section 14 and any re-trials ordered under section 10.

#### **Part 4 — Appeals and matters relating to appeals**

This Part extends the appeal options available to the prosecution and makes a number of amendments to existing defence appeal provisions.

Section 23 concerns two circumstances: (i) where on or after the commencement of this section a person is tried on indictment and acquitted, and (ii) where on or after the commencement of this section a person's conviction is quashed on appeal to the Court of Criminal Appeal and that Court does not order a re-trial.

It provides that the prosecuting authority (most commonly the Director of Public Prosecutions, but on occasion the Attorney General) may appeal on a "with prejudice" basis the acquittal, or as the case may be, the decision not to order a re-trial. The appeal is to the Supreme Court on a question of law. The term "with prejudice" refers to the possibility that the appeal will result in the acquittal or the decision of the Court of Criminal Appeal not to order a re-trial being overturned and a re-trial ordered. This appeal option is in addition to the existing "without prejudice" prosecution appeal right under section 34 of the Criminal Procedure Act 1967 as amended.

The appeal under section 23 is restricted to: (i) rulings which erroneously excluded "compelling evidence", or (ii) in the case of judge directed acquittals, rulings which were wrong in law and where the evidence adduced in the proceedings was evidence upon which a jury (a hypothetical future jury) might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned. A jury verdict on the merits of the case based on the reception of all admissible evidence is not subject to appeal under this Part.

The appeal must be on notice to the person who is the subject of the appeal. The notice of the intention to bring an appeal must be given within 28 days from the day on which the person was acquitted or the conviction was quashed. This period may be extended by the Supreme Court on application to it for a period not exceeding 56 days. Notwithstanding that the appeal must be on notice, the hearing may proceed despite the acquitted person's failure to appear if the court is satisfied that it is in all the circumstances in the interests of justice that the appeal should be heard and determined. Having regard to the person's status as an acquitted person, he or she will remain at liberty (other than where he or she is in prison in connection with another offence) until such time as a re-trial (if any) is ordered by the court under this section and the court makes a decision under section 26 as to whether or not the person should be remanded in custody or on bail pending the hearing of the re-trial. Provision is made for free legal aid for the person who is the subject of the appeal.

When dealing with an appeal under this section the court may, where it is satisfied that the requirements of subsection (3)(a) or

(3)(b) as the case may be are met, and having considered the matters set out in subsection (12), that it is in all the circumstances in the interests of justice to do so, quash the acquittal or reverse the decision of the Court of Criminal Appeal and order a re-trial. The court may make its order subject to such conditions and directions (including conditions and directions as to placing a stay on the re-trial) as it considers necessary to safeguard the fairness of the re-trial. A re-trial ordered under this section is to take place as soon as practicable subject to any conditions or directions as to placing a stay on the re-trial.

Section 24 excludes the verdict in a re-trial pursuant to an order under section 10 of this Act from the scope of section 23 i.e. it will not be possible for the Director to appeal a verdict following such a re-trial on a “with prejudice” basis. The person concerned will have been tried and acquitted on two occasions in relation to the offence concerned. The possibility of a “without prejudice” prosecution appeal under section 34 of the Criminal Procedure Act 1967, as amended will, however, apply.

Section 25 gives the court discretion to make orders relating to attendance at the appeal hearing and the publication and broadcast of matters relating to the hearing in order to safeguard the fairness of any re-trial ordered under section 23. Although the appeal is to be heard in open court, the court may, in the interests of justice, exclude the public or a portion of the public or particular persons from the hearing. The court may not exclude *bona fide* members of the Press. However the court may impose publication and broadcast restrictions in relation to any evidence tendered at the hearing or any matter that would identify or have the effect of identifying the person who is the subject of the appeal or any other person connected with the re-trial for which the order is sought. Breach of such an order is to be treated as an offence and punishable on summary conviction by a fine not exceeding €5,000 and/or imprisonment for a term not exceeding 12 months and on indictment by a fine not exceeding €50,000 and/or imprisonment for a term not exceeding 3 years. An order prohibiting the publication or broadcast of certain matters relating to the hearing shall cease once any re-trial ordered has concluded or once there is no longer a possibility of the person being the subject of a re-trial in connection with the offence concerned.

Section 26 sets out the effect of a re-trial order made under section 23. The effect is that the person may be indicted and re-tried and, if found guilty, sentenced for the offence concerned. Pending the re-trial the court may remand the person in custody or on bail as it thinks proper, or in the case of a person who did not appear before the court for the hearing and determination of the application issue a warrant for his or her arrest. Provision is made for legal aid for the re-trial.

Section 27 amends the meaning given to the words “proceedings for an offence are concluded” by section 3(16)(f) of the Criminal Justice Act 1994 in order to take account of section 23. The purpose of the amendment is to ensure that a freezing order imposed by the High Court under section 24 of the 1994 Act preventing or restricting dealings with property pending the outcome of a trial will, even though there has been an acquittal, remain in place pending the outcome of a “with prejudice” prosecution appeal under section 23 of the Act and any re-trial ordered.

Section 28 clarifies that the provisions of Chapter 1 of Part 4 concerning a prosecution “with prejudice” right of appeal do not

affect any right of appeal or review under the Act or under any other enactment or rule of law.

Section 29 applies the prohibition contained in section 6 of the Prosecution of Offences Act 1974 on the making of communications to certain persons, including the Director of Public Prosecutions, an acting Director or a member of the Garda Síochána for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings to decisions made under this Part.

Section 30 enables rules of court to be made concerning the expeditious hearing of “with prejudice” prosecution appeals under section 23 or re-trials ordered under that section.

Section 31 amends the Courts of Justice Act 1924. Paragraph (a) amends section 29 of the 1924 Act. The purpose of the amendment is to allow a person who has been granted a re-trial by the Court of Criminal Appeal to appeal a point of law raised by him or her before that Court but not determined by it or determined against him or her to the Supreme Court on a “without prejudice” basis. This appeal right only applies where the point of law at issue is relevant to the conduct of the person’s defence in the re-trial. Paragraph (b) amends section 31 of the 1924 Act in order to remove the requirement that a convicted person must obtain a certificate from the trial judge or leave from the Court of Criminal Appeal in order to appeal to that Court. Paragraphs (c) and (d) are consequential on the amendment contained in paragraph (b) and amend sections 32 and 33 of the 1924 Act in order to remove the references to certification/leave to appeal.

Section 32 amends section 44(1) of the Offences Against the State Act 1939 in order to remove the requirement that a person convicted by the Special Criminal Court must obtain leave to appeal to the Court of Criminal Appeal.

#### **Part 5 — Miscellaneous Provisions**

This Part deals with miscellaneous changes to the law on evidence and procedure.

Section 33 amends the Criminal Justice (Evidence) Act 1924. It has the effect of the defendant “dropping the shield” (i.e. leaving him or herself open to his/her own previous character record being introduced) or allowing the prosecution to introduce evidence of a victim’s good character in instances where the defendant either directly or indirectly impugns the character of deceased or incapacitated victims (i.e. persons who are unable to give evidence to refute the defendant’s allegations or to defend their own record).

Paragraph (a) amends section 1(f) of the 1924 Act in subparagraph (i) to provide for the loss of protection from cross examination when evidence of good character is adduced by the defence team from any witness and not just prosecution witnesses. Similarly the protection is also lost when the defence impugns the character of any witness and not just the prosecution witnesses. In subparagraph (ii), a new subparagraph (iiia) is inserted into section 1(f) of the 1924 Act which adds to the list of conditions under which the prosecution may cross examine the accused as to his/her character. It covers situations where imputations are made by the defence against parties to the case who are deceased or incapacitated to the extent that they are unable to give evidence. This covers victims of homicides or serious assaults who, as a result of the offence, are unable to give evidence in court.

Paragraph (b) inserts a new section 1A into the 1924 Act and permits the defence to make imputations against deceased or incapacitated parties but only where it has given 7 days notice of its intention, or in the absence of such notification, it has obtained the permission of the court. Where the defence makes such imputations on the character of a deceased or incapacitated victim the prosecution may adduce evidence of the previous character of the defendant and evidence of the good character of the victim.

Section 34 provides for advance disclosure by the defence of expert evidence it intends to introduce into criminal trials.

Subsection (1) provides that the defence may call expert evidence or expert witnesses only in accordance with this section. Subsection (2) provides for the defence to give notice to the prosecution, at least 10 days before the trial starts, of the expert evidence which it intends to present. Subsection (3) provides for the form which such a notice should take.

Subsection (4) provides for situations where an expert report may not be ready or available for inclusion in the defence notice within the prescribed period. Where the court is satisfied that the defence took all reasonable steps to secure the report on time it may admit the evidence. Subsection (5) provides that the court shall grant leave under this section to call an expert witness on application by the defence if it is satisfied that the expert evidence to be adduced satisfies the requirements of statute or a rule of law relating to evidence and that (i) subsections (2) and (3) have been complied with (ii) where notice was not given at least 10 days in advance of the trial it was because it was not reasonably possible for the defence to do so, or (iii) where the prosecution has adduced expert evidence and a matter has arisen that the defence could not have reasonably anticipated and it would be in the interests of justice to examine the matter further. Subsection (6) provides that the prosecution shall be heard in any applications by the defence under subsection (4) or (5).

Subsection (7) specifies that the notice should be given to the legal representative of the prosecution in writing and must be delivered to the prosecution either at his office or by registered post.

Subsection (8) provides that where leave is granted under this section the prosecution shall be given a reasonable time period to consider the defence report.

Subsection (9) provides for definitions of “expert evidence” and “expert witness”.

Section 35 makes provision for the return or disposal of property which forms part of the evidence in criminal trials.

Subsection (1) provides that this section shall apply where it is proposed to dispose of property before the trial begins or to return that property to its owner.

Subsection (2) provides for the prosecution to serve a “prosecution notice” on the defence at least 23 days before the scheduled start of a trial stating that it proposes to return or dispose of particular items of property to be used as evidence. Subsection (3)

provides that the prosecution notice shall contain a statement of the property, details of its relevance to the criminal proceedings in question, photographs of the article, and any reports of analyses undertaken on the object.

Subsection (4) provides that the defence shall issue a “defence notice” to the prosecution not later than 7 days after service of the prosecution notice. The defence reply shall state whether (i) it agrees to the submission of the statement (and to the return/disposal of the property) (ii) it wishes to submit its own statement regarding the object (iii) it wishes the article to be retained and submitted as evidence.

Subsection (5) provides that where the defence notice indicates under subsection (4) that the defence wish to submit its own statement regarding the object, the defence shall serve the “defence report of evidence” not later than 7 days after service of the defence notice.

Subsection (6) provides that where a defence report of evidence is served on the prosecution under subsection (5) the prosecution shall indicate in the “prosecution notice of reply” whether it accepts or rejects the notice no later than 3 days before the scheduled start of the trial.

Subsection (7) provides that in the event of an agreement between the defence and the prosecution to submit a statement, a Garda not below the rank of inspector shall arrange for the return or destruction of the article in question. This shall only be undertaken with the written consent of the defence and prosecution. The inspector shall keep a written record of the disposal of the article in question.

Subsection (8) specifies the rules that apply to the admissibility of evidence:

- (i) paragraph (a) provides that where the defence and prosecution agree on the prosecution notice, the prosecution report shall be proof of the facts stated therein unless the contrary is shown,
- (ii) paragraph (b) provides that where a defence report of evidence is served on the prosecution and accepted by the prosecution, the defence report of evidence shall be proof of the facts stated therein unless the contrary is shown,
- (iii) paragraph (c) provides that where the defence rejects the prosecution notice, the property shall itself be submitted as evidence,
- (iv) paragraph (d) provides that in any other case both a prosecution report of evidence and a defence report of evidence shall be admissible.

Subsection (9) provides that the persons who prepared reports or information therein may be called to give evidence and may be open to cross examination.

Section 36 amends section 22(5) of the Courts Act 1991, by deleting the words “if the complaint or accusation has been substantiated on oath and”. Section 22 of the 1991 Act contains procedures for the service of summonses by the District Court. Section 22(4) provides that where a person does not appear at the time and place specified in the summons, the court has the option of

adjourning to enable the person to be notified of the adjourned hearing. Section 22(5) is concerned with ensuring the attendance of a person who does not respond to a summons. Under subsection (5) where the person fails to appear, the court may issue a bench warrant for the arrest of the person or proceed to hear the case in the absence of the person. The amendment removes the requirement to hear sworn evidence before a bench warrant may be issued.

Section 37 provides for several amendments to the Criminal Procedure Act 1967.

Paragraph (a) amends the definition of “prosecutor” in section 4 of the 1967 Act.

Paragraph (b) amends section 4B of the 1967 Act to specify that the 42 day period for service of the book of evidence shall begin when it has been determined that the accused person shall be sent forward for trial on indictment.

Paragraph (c) amends section 24(5) of the 1967 Act by substituting a new paragraph (a) to deal with cases where the non-appearance of a person before the court is “by reason of illness or accident” or “for any other good and sufficient reason”. The court may, in the person’s absence, extend the remand of that person for a further period which may exceed fifteen days.

Section 38 adds the common law offence of breach of the peace to the first schedule to the Criminal Justice Act 1951. As a “scheduled offence” under the 1951 Act, the offence can be tried summarily when the conditions in that Act apply i.e. the District Court agrees the particular offence as charged is a minor one and the defendant and DPP agree.

Schedule: the schedule lists the offences which are “relevant offences” for the purpose of section 7. The concept of “relevant offence” applies only in relation to an application under section 8 for a re-trial order on the basis of “new and compelling evidence”.

*An Roinn Dlí agus Cirt agus Athchóirithe Dlí,  
Samhain 2010.*