



Number 22 of 2011

CRIMINAL JUSTICE ACT 2011

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Number 22 of 2011

CRIMINAL JUSTICE ACT 2011

AN ACT TO AMEND CRIMINAL LAW AND PROCEDURE RELATING TO THE INVESTIGATION AND PROSECUTION OF CERTAIN OFFENCES AND, FOR THAT PURPOSE, TO AMEND THE CRIMINAL JUSTICE ACT 1984 TO PROVIDE FOR THE SUSPENSION IN CERTAIN CIRCUMSTANCES OF THE DETENTION OF PERSONS DETAINED BY THE GARDA SÍOCHÁNA UNDER THAT ACT IN CONNECTION WITH THE INVESTIGATION OF SUCH OFFENCES; TO PROVIDE A POWER FOR JUDGES OF THE DISTRICT COURT TO ORDER PERSONS IN CERTAIN CIRCUMSTANCES TO PRODUCE DOCUMENTS OR PROVIDE INFORMATION OR BOTH FOR THE PURPOSES OF THE INVESTIGATION OF SUCH OFFENCES; TO AMEND THE CRIMINAL JUSTICE ACT 1984 TO MAKE FURTHER AND BETTER PROVISION FOR PERSONS DETAINED BY THE GARDA SÍOCHÁNA UNDER THAT ACT BETWEEN THE HOURS OF MIDNIGHT AND 8 A.M.; TO AMEND THAT ACT AND CERTAIN OTHER ENACTMENTS TO MAKE FURTHER AND BETTER PROVISION FOR CONSULTATION WITH A SOLICITOR BY PERSONS DETAINED BY THE GARDA SÍOCHÁNA UNDER THAT ACT AND THOSE ENACTMENTS IN CONNECTION WITH THE INVESTIGATION OF OFFENCES; TO PROVIDE FOR OFFENCES RELATING TO THE CONCEALMENT OF FACTS DISCLOSED BY DOCUMENTS AND THE WITHHOLDING OF INFORMATION IN CERTAIN CIRCUMSTANCES; AND TO PROVIDE FOR RELATED MATTERS.

[2nd August, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Criminal Justice Act 2011.

Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint 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.—In this Act—

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

“arrestable offence” has the meaning it has in section 2 (as amended by section 8 of the Criminal Justice Act 2006) of the Criminal Law Act 1997;

“document” includes information recorded in any form and any thing on or in which information is recorded and from which information can be extracted;

“enactment” means a statute or an instrument made under a power conferred by statute;

“Minister” means the Minister for Justice and Equality;

“relevant offence” shall be construed in accordance with *section 3*.

Relevant offences for purposes of this Act.

3.—(1) In this Act a relevant offence means—

- (a) an arrestable offence under a provision of an enactment, or at common law, specified in *Schedule 1*,
- (b) an arrestable offence under a provision of an enactment, or at common law, specified in an order made under *subsection (2)*,
- (c) an offence consisting of aiding, abetting, counselling or procuring the commission of an offence specified in *Schedule 1* or in an order made under *subsection (2)*, or
- (d) an offence consisting of conspiring to commit, or inciting the commission of, an offence specified in *Schedule 1* or in an order made under *subsection (2)*.

(2) The Minister may by order specify as a relevant offence an arrestable offence under a provision of an enactment, or at common law, relating to any of the following areas, namely—

- (a) banking, investment of funds and other financial activities,
- (b) company law,
- (c) money laundering and financing terrorism,
- (d) theft and fraud,
- (e) bribery and corruption,
- (f) competition and consumer protection,
- (g) criminal acts involving the use of electronic communication networks and information systems or against such networks or systems or both, or
- (h) the raising and collection of taxes and duties,

if the Minister considers that it is proper to do so and he or she is of opinion that the powers conferred by this Act in relation to the investigation of relevant offences are necessary for the investigation of such an offence by reason of the nature of the offence concerned and the prolonged period of time that is generally required for the investigation of such an offence as a result of the complexity that generally arises in such an investigation due to any one or more of the following factors, namely—

- (i) the number of witnesses,
- (ii) the volume of documents,
- (iii) the wide distribution and proliferation of documents arising from the use of electronic means of communication,
- (iv) the number of transactions,
- (v) the complexity of transactions, or
- (vi) other factor,

that may be expected to be involved.

(3) An order under *subsection (2)* shall only be made after consultation by the Minister with any other Minister of the Government who, in the opinion of the Minister, having regard to the functions of that other Minister of the Government under the enactment concerned or in relation to the offence at common law concerned, ought to be consulted.

4.—(1) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations. Orders and regulations.

(2) Every order under *section 3(2)*, or regulation under this Act, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

5.—Sections 47 and 52 of the Criminal Justice (Miscellaneous Provisions) Act 2009 are repealed. Repeals.

6.—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. Expenses.

PART 2

DETENTION

7.—Section 4 of the Act of 1984 is amended—

- (a) by the insertion of the following subsections after subsection (3):

Amendment of section 4 of Act of 1984.

“(3A) (a) Notwithstanding the generality of subsection (3), if a person is detained pursuant to this section in respect of a relevant offence, the member of the Garda Síochána in charge of the Garda Síochána station where the person is being detained may, at any time during the detention, where the member has reasonable grounds for believing that it is necessary for the purpose of permitting enquiries or investigations to be made for the further and proper investigation of the offence concerned, suspend the detention of the person.

(b) Where the member of the Garda Síochána in charge of the Garda Síochána station suspends a person’s detention under this subsection, the person shall, subject to subsection (5A), be released from custody forthwith unless his or her detention is authorised apart from this Act.

(3B) (a) A person’s detention pursuant to this section in respect of a relevant offence may be suspended under subsection (3A) on no more than 2 occasions.

(b) The total period of time for which a person’s detention may be suspended shall not in any case exceed a period of 4 months from the date on which the detention was first suspended.

(c) Subject to paragraph (d), a person whose detention is suspended under subsection (3A) shall return to such Garda Síochána station at such date and time as is specified by notice in writing given to him or her under subsection (3C) or at such other date and time or Garda Síochána station as may be notified to him or her in writing under subsection (3D).

(d) Where, in the case of a person whose detention is suspended under subsection (3A)—

(i) his or her detention is continued in respect of another offence, and

(ii) the total period of detention permissible under subsection (9) is reached during that continuation of detention,

the member of the Garda Síochána in charge of the Garda Síochána station concerned shall give the person concerned notice in writing or cause him or her to be given notice in writing of that fact, and the notice under subsection (3C) or (3D), as the case may be, shall be deemed to be withdrawn accordingly.

(3C) (a) Where a person’s detention is suspended under subsection (3A), the member of the Garda Síochána in charge of the Garda Síochána station concerned shall give the person notice in writing or cause him or her to be given notice in writing—

- (i) that his or her detention is being suspended,
 - (ii) of the Garda Síochána station and of the date and time on which he or she is required to return to such station for the continuation of the detention concerned, and
 - (iii) of the consequences under sections 4A and 4B of failing to return in accordance with subsection (3B).
- (b) A member of the Garda Síochána when giving the notice to any person under paragraph (a) shall explain to him or her orally the effect of the notice.
- (3D) (a) Subject to subsection (3B)(b), a member of the Garda Síochána not below the rank of inspector may, in respect of a person whose detention has been suspended under subsection (3A), issue a notice in writing to the person appointing a new date and time or a different Garda Síochána station for the person's return for the continuation of the detention concerned where that member has reasonable grounds for believing that it is necessary for the proper investigation of the offence concerned to so change the return date and time or the Garda Síochána station, as the case may be.
- (b) The person in respect of whom the notice under paragraph (a) is issued shall be given such notice of the new date and time or Garda Síochána station appointed under that paragraph as shall be prescribed in regulations made by the Minister under section 4C.
- (c) Only one notice under paragraph (a) may be issued to a person during each period of suspension, but nothing in this paragraph shall prejudice the exercise of the power to issue such notice in the circumstances referred to in paragraph (d).
- (d) A member of the Garda Síochána not below the rank of inspector may—
- (i) if a person whose detention is suspended under subsection (3A) so requests, and
 - (ii) the member is satisfied that there is good and sufficient reason for doing so,
- issue a notice under paragraph (a).
- (3E) (a) Where a person returns in accordance with subsection (3B) or is returned under section 4A to the Garda Síochána station—

- (i) his or her detention shall be continued in accordance with this section for such period as is authorised by this section, and
 - (ii) the period of time commencing on his or her return to the Garda Síochána station for the continuation of the detention concerned shall be included in reckoning a period of detention permitted by this section.
- (b) Where, however, the member of the Garda Síochána in charge of the Garda Síochána station concerned no longer has, at the time of the person's return, reasonable grounds for believing that the person's continued detention is necessary for the proper investigation of the offence, the person shall, subject to subsection (5A), be released from custody forthwith unless his or her detention is otherwise authorised by law.
- (3F) For the avoidance of doubt it is hereby declared that—
- (a) where a person's detention is suspended under subsection (3A), the detention shall remain suspended until such time as it is continued under subsection (3E) and, accordingly, the period of time during which the detention remains suspended shall be excluded in reckoning a period of detention permitted by this section,
 - (b) where a person whose detention is suspended under subsection (3A) in respect of an offence, is subsequently arrested and detained ('subsequent arrest and detention') in respect of another offence, the subsequent arrest and detention shall not operate to affect the detention which was suspended and it shall remain suspended until such time as it is continued under subsection (3E),
 - (c) subject to subsection (9), where a person's detention is suspended under subsection (3A) in respect of an offence but his or her detention is continued under subsection (5A) in respect of another offence, the continuation of the detention under subsection (5A) shall not operate to affect the detention which was suspended in respect of the first mentioned offence and the detention shall in so far as it relates to the first mentioned offence remain suspended until such time as it is continued under subsection (3E)."
- (b) in subsection (5A), by the substitution of "other than an offence to which the detention relates or an offence in respect of which the person's detention has been suspended under subsection (3A)" for "other than an offence to which the detention relates",

- (c) by the substitution of the following subsection for subsection (6):

“(6) (a) Subject to paragraphs (c) and (d), if a person is being detained pursuant to this section in a Garda Síochána station between midnight and 8 a.m.—

- (i) any questioning of the person for the purpose of the investigation shall be suspended during that period,
 - (ii) such period of time shall be excluded in reckoning a period of detention permitted by this section, and
 - (iii) the powers conferred by section 6 shall not be exercised during the period of suspension.
- (b) The member of the Garda Síochána in charge of the Garda Síochána station shall inform, or cause to be informed, the detained person that he or she may object to the suspension of questioning between midnight and 8 a.m.
- (c) Paragraph (a) shall not have effect if the detained person objects to the suspension of questioning under that paragraph and such objection shall be recorded in writing or by electronic or other similar means.
- (d) A member of the Garda Síochána in charge of a Garda Síochána station may authorise the questioning of a person detained pursuant to this section between the hours of midnight and 8 a.m. where the member concerned has reasonable grounds for believing that to suspend the questioning would involve a risk of—
- (i) interference with, or injury to other persons,
 - (ii) serious loss of, or damage to, property,
 - (iii) the destruction of, or interference with, evidence,
 - (iv) accomplices being alerted or the securing of their apprehension being made more difficult, or
 - (v) hindering the recovery of property obtained as a result of an offence or the recovery of the value of any proceeds of an offence.
- (e) If at any time during which the authorisation is in effect, the member of the Garda Síochána in charge of the Garda Síochána station believes there are no longer reasonable grounds for the authorisation, it shall be withdrawn.

- (f) Where an authorisation is given under paragraph (d) it shall have effect from the time of the giving of a notice in the prescribed form under paragraph (g) until 8 a.m. or until the time of the giving of a subsequent notice in the prescribed form under paragraph (h), as the case may be, and—
- (i) the period during which the authorisation has effect shall be included in reckoning a period of detention permitted by this section, and
 - (ii) the powers conferred by section 6 shall be exercisable in respect of the person concerned.
- (g) Where an authorisation is given under paragraph (d), the member of the Garda Síochána in charge of the Garda Síochána station shall give a notice in writing in the prescribed form to the detained person which shall—
- (i) state that an authorisation has been given,
 - (ii) specify the time at which the authorisation was given together with the time at which the notice was given,
- and that member shall explain to the person orally the effect of the notice so given.
- (h) Where an authorisation is withdrawn under paragraph (e), the member of the Garda Síochána in charge of the Garda Síochána station shall give a notice in writing in the prescribed form to the detained person which shall—
- (i) state that the authorisation has been withdrawn, and
 - (ii) specify the time at which the authorisation was withdrawn together with the time at which the notice was given,
- and that member shall explain to the person orally the effect of the notice so given.
- (i) An authorisation or a withdrawal of an authorisation under this subsection may be given orally or in writing and if given orally shall be recorded in writing as soon as practicable.
- (j) Nothing in paragraph (a) shall operate to prevent the powers conferred by section 6 being exercised in respect of a person who is arrested and detained between the hours of midnight and 8 a.m.

(k) In this subsection ‘prescribed’ means prescribed by the Minister in regulations made by the Minister under section 7.”,

(d) in subsection (9), by the substitution of “subsection (3F)(a), (6), (8), (8A) or (8B) or section 4A or 5A” for “subsection (6), (8), (8A) or (8B)”, and

(e) by the insertion of the following subsection after subsection (11):

“(12) In this section ‘relevant offence’ has the meaning it has in the *Criminal Justice Act 2011*.”.

8.—The Act of 1984 is amended by the insertion of the following sections after section 4:

Failure to return to Garda Síochána station as required pursuant to section 4 of Act of 1984.

“Power to arrest and return person for purpose of continuation of detention.

4A.—(1) Notwithstanding section 10, where a member of the Garda Síochána reasonably suspects that a person has failed to return in accordance with section 4(3B) to a Garda Síochána station for the continuation of his or her detention, the member may, for the purpose of the continuation of the detention—

(a) arrest the person without warrant, and

(b) return him or her to the Garda Síochána station specified for the continuation of the detention concerned.

(2) A person who is arrested under this section shall, as soon as practicable, be returned to the Garda Síochána station which is specified for the continuation of his or her detention.

(3) Where a person is returned to a Garda Síochána station under subsection (2), the period of time commencing on his or her arrest and ending on his or her arrival to the Garda Síochána station concerned shall be excluded in reckoning a period of detention permitted under section 4.

Offence of failing to return to Garda Síochána station.

4B.—(1) If a person whose detention has been suspended under section 4(3A) fails, without reasonable excuse, to return to the Garda Síochána station concerned in accordance with subsection (3B) of section 4, he or she shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 2 years from the date on which the offence was committed.

(3) The provisions of this section are in addition to, and not in substitution for, the provisions of section 4A.

Regulations regarding suspension of person's detention under section 4(3A).

4C.—(1) Without prejudice to section 7 and to the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987), the Minister shall make regulations in relation to the procedures that are to apply where a person's detention is suspended under section 4(3A) and, without prejudice to the generality of the foregoing, such regulations may make provision for—

- (a) the form of notices for the purposes of subsections (3B), (3C) and (3D) of section 4, and
- (b) the notice period for the purpose of section 4(3D)(b).

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) A failure on the part of any member of the Garda Síochána to observe any provision of the regulations shall not of itself render that person liable to any criminal or civil proceedings or of itself affect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him or her.

(4) A failure on the part of any member of the Garda Síochána to observe any provision of the regulations shall render him or her liable to disciplinary proceedings.

(5) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.”.

Further amendment of Act of 1984.

9.—The Act of 1984 is amended—

- (a) by the insertion of the following sections after section 5:

“Questioning of persons detained under section 4 not generally permitted pending access to legal advice.

5A.—(1) Subject to subsections (4) and (5), no questioning of a person detained pursuant to section 4 shall take place until such time as the person has had an opportunity to consult with a solicitor and, the period of time commencing from the time the detained person makes the request to consult a solicitor and ending upon the commencement of such a consultation, shall be excluded in reckoning a period of detention permitted by section 4.

(2) The period that may be excluded under subsection (1) shall not—

(a) in the case of a person who is detained in a Garda Síochána station between the hours of midnight and 8 a.m. where section 4(6)(c) applies, exceed 6 hours or such other shorter period as the Minister may prescribe by regulations under section 5B, or

(b) in any other case, exceed 3 hours or such other shorter period as the Minister may prescribe by regulations under section 5B.

(3) A detained person who refuses to consult with a solicitor who has made himself or herself available for the purpose of consulting with the detained person shall, in so refusing to consult with the solicitor, be deemed to have waived his or her right to consult a solicitor.

(4) Where a person detained pursuant to section 4 waives or is deemed under subsection (3) to have waived his or her right to consult a solicitor the questioning of that person may commence.

(5) A member of the Garda Síochána in charge of a Garda Síochána station may authorise the questioning of a person who is being detained pursuant to section 4 and who has not yet consulted with a solicitor where the member concerned has reasonable grounds for believing that to delay the questioning would involve a risk of—

(a) interference with, or injury to, other persons,

(b) serious loss of, or damage to, property,

(c) the destruction of, or interference with, evidence,

(d) accomplices being alerted or the securing of their apprehension being made more difficult, or

(e) hindering the recovery of property obtained as a result of an offence or the recovery of the value of any proceeds of an offence.

(6) Where an authorisation is given under subsection (5), the member in charge

shall give a notice in writing in the prescribed form to the detained person which shall—

- (a) state that an authorisation has been given,
- (b) specify the time at which the authorisation was given together with the time at which the notice was given,

and that member shall explain to the person orally the effect of the notice so given.

(7) An authorisation under subsection (5) may be given orally or in writing and if given orally shall be recorded in writing as soon as practicable.

(8) In this section and in section 5B—

‘consultation’ means a consultation in private and includes consultation by means of a telephone;

‘consultation in private’ includes consultation within sight of a member of the Garda Síochána but not within hearing distance of the member concerned.

Regulations regarding access to solicitor during detention.

5B.—(1) Without prejudice to section 7 and to the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987), the Minister shall make regulations in relation to access to a solicitor by persons detained in Garda Síochána stations and, without prejudice to the generality of the foregoing, such regulations may make provision for—

- (a) the periods for the purpose of section 5A(2),
- (b) the procedures that are to apply in circumstances where a person nominates a solicitor of his or her choice for the purpose of consulting with that solicitor, including the procedures that are to apply in circumstances where the solicitor nominated by the detained person is unable to undertake to make himself or herself available within a specified period,
- (c) the procedures that are to apply for the nomination by the member of the Garda Síochána in charge of the Garda Síochána station of another solicitor who

can undertake to make himself or herself available within a specified period,

- (d) the procedures that are to apply where a detained person refuses to consider whether or not he or she wishes to nominate a solicitor for the purpose of consulting with that solicitor, including the procedures for the nomination, by the member of the Garda Síochána in charge of the Garda Síochána station, of a solicitor who can undertake to make himself or herself available within a specified period,
- (e) the periods for the purposes of paragraphs (b), (c) and (d),
- (f) the procedures that are to apply in circumstances where a solicitor nominated by the Garda Síochána makes himself or herself available for the purpose of consulting with that person,
- (g) the procedures that are to apply in circumstances where a person refuses to consult with the solicitor who makes himself or herself available for the purpose of consulting with that person, including the provision for informing the detained person of the effect under section 5A(3) of such refusal,
- (h) the procedures that are to apply in circumstances where—
 - (i) a person waives his or her right to consult a solicitor, including the form of such waiver, and
 - (ii) a person is deemed under section 5A(3) to have waived his or her right to consult a solicitor, including the form of such waiver,
- (i) the procedures that are to apply in circumstances where a person withdraws his or her waiver, including the form of such withdrawal of waiver,
- (j) provision of consultation facilities including facilities to enable a detained person to consult in

private with a solicitor in person or by means of a telephone, and

(k) the form for the purpose of section 5A(6).

(2) Regulations under this section may—

(a) make different provisions in relation to different classes of persons detained in Garda Síochána stations, or

(b) for the purpose of the periods under section 5A(2), fix different periods in relation to different areas.

(3) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(4) A failure on the part of any member of the Garda Síochána to observe any provision of the regulations shall not of itself render that person liable to any criminal or civil proceedings or of itself affect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him or her.

(5) A failure on the part of any member of the Garda Síochána to observe any provision of the regulations shall render him or her liable to disciplinary proceedings.

(6) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.”,

(b) in section 9, by the substitution of “Sections 4(8), 4(8A), 4(8B), 5, 5A,” for “Sections 4(8), 4(8A), 4(8B), 5,”,

(c) in section 18, in subsection (3), by the substitution of the following paragraph for paragraph (b):

“(b) the accused was informed before such failure or refusal occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, the accused was afforded an opportunity to so consult before such failure or refusal occurred.”,

- (d) in section 19, in subsection (3), by the substitution of the following paragraph for paragraph (b):

“(b) the accused was informed before such failure or refusal occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, the accused was afforded an opportunity to so consult before such failure or refusal occurred.”,

and

- (e) in section 19A, in subsection (3), by the substitution of the following paragraph for paragraph (b):

“(b) the accused was informed before such failure occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, the accused was afforded an opportunity to so consult before such failure occurred.”.

10.—Section 2 of the Offences against the State (Amendment) Act 1998 is amended, in subsection (2), by the substitution of the following paragraph for paragraph (b):

Amendment of section 2 of Offences against the State (Amendment) Act 1998.

“(b) the accused was informed before such failure occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, the accused was afforded an opportunity to so consult before such failure occurred.”.

11.—Section 72A of the Criminal Justice Act 2006 is amended, in subsection (2), by the substitution of the following paragraph for paragraph (b):

Amendment of section 72A of Criminal Justice Act 2006.

“(b) the accused was informed before such failure occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, the accused was afforded an opportunity to so consult before such failure occurred.”.

12.—Section 3 of the Criminal Justice (Forensic Evidence) Act 1990 is amended—

Amendment of section 3 of Criminal Justice (Forensic Evidence) Act 1990.

- (a) in subsection (1), by the substitution of “a person shall not be convicted of an offence solely or mainly on an inference drawn from such refusal” for “a person shall not be convicted of an offence solely on an inference drawn from such refusal”,

- (b) by the substitution of the following subsection for subsection (3):

“(3) Subsection (1) shall not have effect unless—

- (a) the accused was told in ordinary language when seeking his or her consent that—

- (i) the sample was required for the purpose of forensic testing,
- (ii) his or her consent was necessary, and
- (iii) if his or her consent was not given, what the effect of a refusal by him or her of such consent could be,

and

- (b) the accused was informed before such refusal occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, the accused was afforded an opportunity to so consult before such refusal occurred.”,

and

- (c) by the insertion, after subsection (3), of the following subsection:

“(3A) Subject to subsection (4), this section shall not apply to a refusal by a person to give the appropriate consent unless the seeking of such consent by a member of the Garda Síochána is recorded by electronic or similar means or the person consents in writing to it not being so recorded.”.

Amendment of section 5 of Criminal Justice (Drug Trafficking) Act 1996.

13.—Section 5 of the Criminal Justice (Drug Trafficking) Act 1996 is amended by the substitution of “5, 5A” for “5”.

Amendment of section 52 of Criminal Justice Act 2007.

14.—Section 52 of the Criminal Justice Act 2007 is amended by the substitution of “5, 5A” for “5”.

PART 3

PROVISIONS RELATING TO DOCUMENTS AND INFORMATION

Order to produce documents or provide information.

15.—(1) For the purposes of the investigation of a relevant offence, a member of the Garda Síochána may apply to a judge of the District Court for an order under this section in relation to—

- (a) the making available by a person of any particular documents or documents of a particular description, or
- (b) the provision by a person of particular information by answering questions or making a statement containing the information,

or both.

(2) On an application under *subsection (1)*, a judge of the District Court, if satisfied by information on oath of the member of the Garda Síochána making the application that—

- (a) there are reasonable grounds for suspecting that a person has possession or control of particular documents or documents of a particular description,
- (b) there are reasonable grounds for believing that the documents are relevant to the investigation of the relevant offence concerned,
- (c) there are reasonable grounds for suspecting that the documents (or some of them) may constitute evidence of or relating to the commission of that offence, and
- (d) there are reasonable grounds for believing that the documents should be produced or that access to them should be given, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances,

may order the person to—

- (i) produce the documents to a member of the Garda Síochána for the member to take away and, if the judge considers it appropriate, to identify and categorise the documents to be so produced in the particular manner (if any) sought in the application or in such other manner as the judge may direct and to produce the documents in that manner, or
- (ii) give such a member access to them,

either immediately or within such period as the order may specify.

(3) On an application under *subsection (1)*, a judge of the District Court, if satisfied by information on oath of the member of the Garda Síochána making the application that—

- (a) there are reasonable grounds for suspecting that a person has information which he or she has failed or refused without reasonable excuse to give to the Garda Síochána having been requested to do so,
- (b) there are reasonable grounds for believing that the information is relevant to the investigation of the relevant offence concerned,
- (c) there are reasonable grounds for suspecting that the information (or some of it) may constitute evidence of or relating to the commission of that offence, and
- (d) there are reasonable grounds for believing that the information should be provided, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances,

may, subject to *subsection (4)*, order the person to—

- (i) provide the information to a member of the Garda Síochána by answering the questions specified in the application or making a statement setting out the answers to those questions or both, and

- (ii) make a declaration of the truth of the answers to such questions,

either immediately or within such period as the order may specify.

(4) The references in *subsections (1)(b)* and *(3)* to information that may be the subject of an order under this section are references to information that the person concerned has obtained in the ordinary course of business.

(5) An order under this section relating to documents in any place may, on the application of the member of the Garda Síochána concerned under *subsection (1)*, require any person, being a person who appears to the judge of the District Court to be entitled to grant entry to the place, to allow a member of the Garda Síochána to enter it so as to obtain access to the documents.

(6) Where the documents concerned are not in legible form, an order under this section shall have effect as an order—

- (a) to give to a member of the Garda Síochána any password necessary to make the documents legible and comprehensible,
- (b) otherwise to enable the member of the Garda Síochána to examine the documents in a form in which they are legible and comprehensible, or
- (c) to produce the documents to the member of the Garda Síochána in a form in which they can be removed and in which they are, or can be made, legible and comprehensible.

(7) An order under this section—

- (a) in so far as it may empower a member of the Garda Síochána to take away a document, or to be given access to it, shall also have effect as an order empowering the member to make a copy of the document and to take the copy away,
- (b) shall not confer any right to production of, or access to, any document subject to legal professional privilege, and
- (c) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(8) (a) Where a document is, or may be, taken away by a member of the Garda Síochána pursuant to an order under this section, any person to whom the order relates, or who is affected by the order, may request the member of the Garda Síochána to permit the person to retain the document, or to have it returned to the person, while the member takes or retains a copy of it.

- (b) The member of the Garda Síochána concerned may accede to a request under *paragraph (a)* but only if he or she is satisfied that—

- (i) the document is required by the person for the purposes of his or her business or for some other legitimate purpose, and
 - (ii) the person undertakes in writing—
 - (I) to keep the document safely and securely, and
 - (II) when requested by the Garda Síochána to do so, to furnish it to the Garda Síochána in connection with any criminal proceedings for which it is required.
- (c) A failure or refusal by a person to comply with an undertaking given by him or her under *paragraph (b)(ii)* shall not prejudice the admissibility in evidence in any criminal proceedings of a copy of the document concerned.
- (9) Any documents taken away by a member of the Garda Síochána pursuant to an order under this section may be retained by the member for use as evidence in any criminal proceedings.
- (10) A statement or admission made by a person pursuant to an order under this section shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under *subsection (15), (16) or (17)*).
- (11) (a) An order under this section providing that documents be produced, or that access to them be given, by a person may, if the judge of the District Court considers it appropriate to do so, require the person to furnish a certificate to a member of the Garda Síochána affirming—
- (i) the authenticity of the documents, and
 - (ii) in the case of documents in non-legible form that are reproduced in legible form, the system and manner of that reproduction,
- either when the documents are produced, or access to them is given, or at such time thereafter as may be specified in the order.
- (b) The Minister may by regulations made under this subsection specify the manner in which documents of different types or classes, or copies of them, may be authenticated.
- (12) Where a person who produces documents pursuant to an order under this section claims a lien on those documents or some of them, the production shall be without prejudice to the lien.
- (13) A judge of the District Court may, on the application of any person to whom an order under this section relates or a member of the Garda Síochána, vary or discharge the order.
- (14) A judge of the District Court may, on the application of any person who is affected by an order under this section whose request for the return of documents under *subsection (8)* has not been acceded to, make an order regarding the return of the documents concerned to that person if the judge considers it appropriate to do so subject to such conditions (if any) as the judge may direct.

(15) A person who without reasonable excuse fails or refuses to comply with an order under this section shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

(16) A person who, in purported compliance with an order under this section provides information or makes a statement which is false or misleading in a material particular knowing it to be so false or misleading, or being reckless as to whether it is so, shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

(17) A person who without reasonable excuse fails or refuses to comply with an undertaking given by him or her under *subsection (8)(b)(ii)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(18) An application for an order under *subsection (1)* shall be made to a judge of the District Court who is assigned to the district court district in which the documents sought are located or the person from whom the documents or information are sought ordinarily resides or carries on any profession, business or occupation or, if that person is a company (within the meaning of the Companies Acts), the district court district in which the registered office of the company is situated or the company carries on any business.

(19) Nothing in this section shall affect the operation of a provision in any other enactment under which a court may order a person to produce any documents to a member of the Garda Síochána or any other person in connection with the investigation of an offence.

Privileged legal material.

16.—(1) In this section “privileged legal material” means a document which, in the opinion of the court concerned, a person is entitled to refuse to produce or to give access to it on the grounds of legal professional privilege.

(2) If a person refuses to produce a document or give access to it pursuant to an order of a judge of the District Court under *section 15* on the grounds that the document is privileged legal material, a member of the Garda Síochána may apply to a judge of that Court for a determination as to whether the document is privileged legal material.

(3) A person who refuses to produce a document or give access to it pursuant to an order of a judge of the District Court under *section 15* on the grounds that the document is privileged legal material may apply to a judge of the District Court for a determination as to whether the document is privileged legal material.

(4) A person who refuses to produce a document or give access to it pursuant to an order of a judge of the District Court under *section 15* on the grounds that the document is privileged legal material shall preserve the document and keep it in a safe and secure place pending the determination of an application under *subsection (2)* or *(3)* and shall, if it is so determined not to be privileged legal material, produce it in accordance with the order.

(5) Pending the making of a final determination of an application under *subsection (2)* or *(3)*, the judge of the District Court may give such interim or interlocutory directions as the judge considers appropriate including, without prejudice to the generality of the foregoing, in a case in which the volume of documents that are the subject of the application is substantial, directions as to the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the judge considers to be appropriate for the purpose of—

(a) examining the documents, and

(b) preparing a report for the judge with a view to assisting or facilitating the judge in the making by him or her of his or her determination as to whether the documents are privileged legal material.

(6) An application under *subsection (2)*, *(3)* or *(5)* may, if the judge of the District Court so directs, be heard otherwise than in public.

(7) Notice of an application under *subsection (2)* shall be served on the person to whom the order concerned relates and notice of an application under *subsection (3)* shall be served on the member of the Garda Síochána who seeks to compel the production of the document concerned or to be given access to it.

(8) An appeal against the determination of a judge of the District Court under this section shall lie to the Circuit Court and no further appeal shall lie from an order of the Circuit Court made on an appeal under this section.

(9) Rules of court may make provision for the expeditious hearing of applications to a judge of the District Court, and any appeals against the determinations of such a judge, under this section.

(10) The Minister may make regulations for the purposes of this section relating to the awarding, and payment, of costs to or by any party pursuant to an application or an appeal under this section.

17.—(1) Any person who—

(a) knows or suspects that an investigation by the Garda Síochána into a relevant offence, other than an offence to which section 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001 applies, is being or is likely to be carried out, and

(b) falsifies, conceals, destroys or otherwise disposes of a document or record which he or she knows or suspects is or would be relevant to the investigation or causes or

Concealing facts
disclosed by
documents.

permits its falsification, concealment, destruction or disposal,

shall be guilty of an offence.

(2) Where a person—

- (a) falsifies, conceals, destroys or otherwise disposes of a document, or
- (b) causes or permits its falsification, concealment, destruction or disposal,

in such circumstances that it is reasonable to conclude that the person knew or suspected—

- (i) that an investigation by the Garda Síochána into a relevant offence, other than an offence to which section 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001 applies, was being or was likely to be carried out, and
- (ii) that the document was or would be relevant to the investigation,

he or she shall be taken for the purposes of this section to have so known or suspected, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he or she so knew or suspected.

(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(4) This section shall not affect the operation of section 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001 insofar as that section applies to offences that are relevant offences.

Presumptions relating to documents.

18.—(1) The presumptions provided for in *subsections (2) and (3)* shall apply in any proceedings for a relevant offence in relation to information contained in a document (within the meaning of this Act) to which section 5 of the Criminal Evidence Act 1992 applies or would apply if the document were reproduced in permanent legible form.

(2) Where a document purports to have been created by a person in circumstances in which it is reasonable to presume that it was created by that person it shall be presumed, unless the contrary is shown, that the document was created by that person and, in those circumstances, that any statement contained therein, unless the document expressly or by implication attributes its making to some other person, was made by that person.

(3) Where a document purports to have been—

- (a) created by a person in circumstances in which it is reasonable to presume that it was created by that person, and

- (b) addressed and sent to a second person in circumstances in which it is reasonable to presume that it was so addressed and sent by the first person,

it shall be presumed, unless the contrary is shown, that the document was created and sent by the first person and received by the second person, and that any statement contained therein—

- (i) unless the document expressly or by implication attributes its making to some other person, was made by the first person, and
- (ii) came to the notice of the second person.

(4) Where a document is found in any place that is occupied by any person for the purposes of a trade, profession or other activity that is carried on by that person in circumstances in which it is reasonable to presume that the document is the property of that person, then, in any proceedings for a relevant offence, the document shall be presumed, unless the contrary is shown, to be the property of that person.

(5) Where a trade, profession or other activity is carried on by any person at a particular place, a document that is found at that place in circumstances in which it is reasonable to presume that the document relates to that trade, profession or, as the case may be, other activity carried on by that person shall, in any proceedings for a relevant offence, be presumed, unless the contrary is shown, to be a document which relates to that trade, profession or, as the case may be, other activity, carried on by that person.

19.—(1) A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in—

Withholding information.

- (a) preventing the commission by any other person of a relevant offence, or
- (b) securing the apprehension, prosecution or conviction of any other person for a relevant offence,

and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

20.—(1) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee—

Protection for employees from penalisation for disclosing information relating to relevant offences.

(a) for making a disclosure or for giving evidence in relation to such disclosure in any proceedings relating to a relevant offence, or

(b) for giving notice of his or her intention to do so.

(2) *Schedule 2* shall have effect in relation to an alleged contravention of *subsection (1)*.

(3) Nothing in *paragraphs (a), (c), (d), (e) and (f)* of the definition of “penalisation” shall be construed in a manner which prevents an employer from—

(a) ensuring that the business concerned is carried on in an efficient manner, or

(b) taking any action required for economic, technical or organisational reasons.

(4) (a) If penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee, as referred to in *paragraph (a)* of the definition of “penalisation”, the employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with his or her consent) may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal and, if the employee or his or her parent or guardian, as the case may be, does so, a complaint of such dismissal may not be presented to a rights commissioner under *paragraph 1(1)* of *Schedule 2*.

(b) If an employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with his or her consent) presents a complaint to a rights commissioner under *paragraph 1(1)* of *Schedule 2* in respect of a dismissal referred to in *paragraph (a)*, the employee or his or her parent or guardian, as the case may be, may not institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal.

(5) For the purposes of this section and *Schedule 2*, a reference to “dismissal” includes—

(a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and

(b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

(6) In this section, *section 21* and in *Schedule 2*—

“contract of employment” means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

“disclosure”, in relation to an employee, means a disclosure by the employee to a member of the Garda Síochána of information which he or she knows or believes might be of material assistance in—

- (a) preventing the commission by any other person of a relevant offence, or
- (b) securing the apprehension, prosecution or conviction of any other person for a relevant offence;

“employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

“employer”, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

- (a) a person (other than an employee of that person) under whose control and direction an employee works, and
- (b) where appropriate, the successor of the employer or an associated employer of the employer;

“penalisation” means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

- (a) suspension, lay-off or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,
- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal.

21.—(1) An employee who makes a disclosure knowing it to be false or being reckless as to whether it is false shall be guilty of an offence. Offences, etc.

(2) An employer who contravenes *section 20(1)* shall be guilty of an offence.

(3) A person who, upon examination on oath or affirmation authorised under *paragraph 2(7) of Schedule 2*, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true shall be guilty of an offence.

(4) A person to whom a notice under *paragraph 2(8) of Schedule 2* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence.

(5) A person guilty of an offence under *subsection (1) or (2)* shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

(6) A person guilty of an offence under *subsection (3)* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(7) A person guilty of an offence under *subsection (4)* shall be liable on summary conviction to a class A fine.

(8) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

- (a) a person named in the document was, by a notice under *paragraph 2(8) of Schedule 2*, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both,
- (b) a sitting of the Labour Court was held on that day and at that time and place, and
- (c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person under *subsection (4)*, be evidence of the matters so stated without further proof unless the contrary is shown.

Liability for offences by bodies corporate.

22.—(1) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies 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.

SCHEDULE 1

Section 3.

“RELEVANT OFFENCES” FOR THE PURPOSES OF THIS
ACT

Offences relating to banking, investment of funds and other financial activities

1. An offence under section 58 of the Central Bank Act 1971 insofar as it relates to a contravention of section 17, 18, 23, 24 or 25 of that Act.
2. An offence under section 37(6) or 41(1) of the Insurance Act 1989.
3. An offence under section 20(4) or 24(4) of the Trustee Savings Banks Act 1989.
4. An offence under section 11(3) or 13(5) of the Unit Trusts Act 1990.
5. An offence under section 25(5) or 27(4), or subsection (7) or (8) of section 35, of the Investment Limited Partnerships Act 1994.
6. An offence under section 10(16), 19(1)(b), 30, 34, 35(4), 46(2), 54(6), 56(9), subsection (3), (5), (6) or (9) of section 52 or subsection (7) or (8) of section 79, of the Investment Intermediaries Act 1995.
7. An offence under section 12(2) of the Consumer Credit Act 1995 insofar as it relates to a contravention of subsection (1) or (3) of section 97, or section 101, 102 or 127, of that Act.
8. An offence under section 29(3), or subsection (7) or (8) of section 43, of the Investor Compensation Act 1998.
9. An offence under section 14(3) or 15(2) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.
10. An offence under section 5(2) of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 insofar as it relates to—
 - (a) a failure to discharge a duty to which a person is subject under Regulation 40(1) or 112(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or
 - (b) a contravention of Regulation 19, 52, 159 or 187B of those Regulations.
11. An offence under Regulation 20(2), 22(4), 58(9), 59(8), 60(6), 62(4) or 76(1) of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006).
12. An offence under section 7 of the National Asset Management Agency Act 2009 insofar as it relates to a person other than a credit institution (within the meaning of that Act).

13. An offence under section 48 of the Central Bank Reform Act 2010.

Company law offences

14. An offence under section 60(15), 295 or 297, or under paragraph (a), (d), (e), (f), (g), (i), (j), (k), (l), (m), (n), (o) or (p) of section 293(1), of the Companies Act 1963.
15. An offence under any of the following provisions of the Companies (Amendment) Act 1986:
- (a) section 22(1)(a) (insofar as it relates to a failure to comply with section 5 or 16 of that Act),
 - (b) section 22(2) (insofar as it relates to a failure to take all reasonable steps to secure compliance with the requirements of section 3 of that Act or a failure to comply with section 13 of that Act), or
 - (c) section 22(3).

16. An offence under section 197, 202(10), 242 or 243(1) of the Companies Act 1990.

17. An offence under section 37(1) of the Companies (Amendment) (No. 2) Act 1999.

18. An offence under section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

19. An offence under Regulation 5 or 6 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005).

20. An offence under Regulation 76(4) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007).

Money laundering and terrorist offences

21. An offence under section 7, 8, 9, 10, 35, 37, 38, 42 or 49 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

22. An offence under section 13 of the Criminal Justice (Terrorist Offences) Act 2005.

Theft and fraud offences, etc.

23. An offence under section 4, 6, 7, 9, 10, 11, 15, 17, 18, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37, 38, 42, 43, 44, 45 or 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

24. Conspiracy to defraud at common law.

25. An offence under section 119 of the Registration of Title Act 1964.

26. An offence under *section 17*.

Bribery and corruption offences

27. An offence under section 1 of the Prevention of Corruption Act 1906.

28. An offence under section 7 or 8 of the Prevention of Corruption (Amendment) Act 2001.

Consumer protection offence

29. An offence under section 65 of the Consumer Protection Act 2007.

Criminal damage to property offences

30. An offence under section 2, 3 or 4 of the Criminal Damage Act 1991 insofar as the offence relates to data (within the meaning of section 1 of that Act) or a storage medium in which such data are kept.

Section 20.

SCHEDULE 2

REDRESS FOR CONTRAVENTION OF SECTION 20(1)

Complaints to rights commissioner

1. (1) An employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with his or her consent) or any trade union of which the employee is a member, with the consent of the employee, may present a complaint to a rights commissioner that the employee's employer has contravened *section 20(1)* in relation to the employee.

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall—

- (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
- (b) give a decision in writing in relation to it, and
- (c) communicate the decision to the parties.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded;
- (b) require the employer to take a specified course of action, which may include, in a case where the penalisation constitutes a dismissal, re-instatement or re-engagement;
- (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977;

and the references in *clauses (b) and (c)* to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) Subject to *subparagraph (5)*, a rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(5) Where a delay by an employee in presenting a complaint under this Schedule is due to any misrepresentation by the employer, *subparagraph (4)* shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the employee's notice.

(6) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her

after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to exceptional circumstances.

(7) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Jobs, Enterprise and Innovation.

(8) A copy of a notice under *subparagraph (7)* shall be given to the other party concerned by the rights commissioner.

(9) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

(10) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

Appeals from decision of rights commissioner

2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1(2)* and, if the party does so, the Labour Court shall—

- (a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
- (b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision,
- (c) communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 6 weeks (or such greater period as the Labour Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *clauses (e) and (f) of subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, and the procedures to be followed in relation to them, shall be determined by the Labour Court, namely:

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;
- (b) the times and places of hearings of such appeals;
- (c) the representation of the parties to such appeals;
- (d) the publication and notification of determinations of the Labour Court;
- (e) the particulars to be contained in a notice under *subparagraph (2)*;

(f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Labour Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive.

(6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

(7) The Labour Court shall, on the hearing of any appeal referred to it under *subparagraph (2)*, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation.

(8) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice—

(a) to give evidence in relation to any appeal referred to the Labour Court under *subparagraph (2)*, or

(b) to produce any document specified in the notice relating to the matter in the person's possession or power.

(9) A witness at a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.

Paragraphs 1 and 2: Supplemental provisions

3. (1) Where a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms and—

(a) the time for bringing an appeal against the decision has expired but no such appeal has been brought, or

(b) an appeal has been brought, but it has been abandoned,

the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with his or her consent) or, with the consent of the employee, any trade union of which the employee is a member, may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision.

(2) The bringing of a complaint before the Labour Court under *subparagraph (1)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court.

(3) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under any of *clauses (a), (b), (c), (d), (e) and (f) of subparagraph (4) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (2)*.

Enforcement of determinations of Labour Court

4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application made to it in that behalf by—

- (a) the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with his or her consent), or
- (b) with the consent of the employee, any trade union of which the employee is a member,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned, and the reference in that subparagraph to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.

(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840) for each day or part of a day beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is made.

(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade, business or occupation.

Provisions relating to winding up and bankruptcy

5. (1) There shall be included among the debts which, under section 285 of the Companies Act 1963 are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the company to an employee, and that Act shall have effect accordingly.

(2) Formal proof of the debts to which priority is given under *subparagraph (1)* shall not be required except in cases where it may otherwise be provided by rules made under the Companies Act 1963.

(3) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly.

(4) Formal proof of the debts to which priority is given under *subparagraph (3)* shall not be required except in cases where it may otherwise be provided under the Bankruptcy Act 1988.

Amendment of Protection of Employees (Employers' Insolvency) Act 1984

6. (1) Section 1(1) of the Protection of Employees (Employers' Insolvency) Act 1984 (as amended by Schedule 2 to the Employment Permits Act 2006) is amended by the insertion of the following definition after the definition of "the Act of 2006":

“ ‘Act of 2011’ means the *Criminal Justice Act 2011*;”.

(2) Section 6 of the Protection of Employees (Employers' Insolvency) Act 1984 (as so amended) is amended—

(a) in subsection (2)(a)—

(i) in subparagraph (xxv), by the deletion of “and” after “of the Act of 2004,”,

(ii) in subparagraph (xxvi), by the substitution of “that Schedule, and” for “that Schedule.” and

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

“(xxvii) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under *paragraph 1(2)(b)* of *Schedule 2* to the *Act of 2011* or a determination by the Labour Court under *paragraph 2(1)(b)* of that Schedule.”,

(b) in subsection (2)(b), by the substitution of “, (xxvi) or (xxvii)” for “or (xxvi)”,

(c) in subsection (2)(c), by the substitution of “, (xxvi) or (xxvii)” for “or (xxvi)”, and

(d) in subsection (9), in the definition of “relevant date”, by the substitution of “, (xxvi) or (xxvii)” for “or (xxvi)”.