



Number 29 of 1996

CRIMINAL JUSTICE (DRUG TRAFFICKING) ACT, 1996

AN ACT TO MAKE PROVISION FOR ADDITIONAL POWERS OF DETENTION BY THE GARDA SÍOCHÁNA OF SUSPECTED DRUG TRAFFICKERS FOLLOWING ARREST, TO MAKE PROVISION FOR THE ISSUANCE OF SEARCH WARRANTS BY CERTAIN MEMBERS OF THE GARDA SÍOCHÁNA IN THE CASE OF SUSPECTED DRUG TRAFFICKING OFFENCES AND FOR THE ATTENDANCE OF OFFICERS OF CUSTOMS AND EXCISE AT, AND THE PARTICIPATION OF SUCH OFFICERS IN, THE QUESTIONING OF CERTAIN ARRESTED PERSONS BY THE GARDA SÍOCHÁNA AND TO PROVIDE FOR RELATED MATTERS.

[31st July, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“controlled drug” has the meaning it has in section 2 of the Act of 1977;

“drug trafficking offence” has the meaning it has in section 3 (1) of the Criminal Justice Act, 1994;

“judge of the District Court” means the President of the District Court and any other judge of the District Court standing nominated for the time being for the purposes of this Act by the President of the District Court;

“the Minister” means the Minister for Justice;

“place of detention” shall be construed in accordance with *section 2 (9) (a)*;

“the Act of 1939” means the Offences against the State Act, 1939;

“the Act of 1977” means the Misuse of Drugs Act, 1977;

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

“the Act of 1990” means the Criminal Justice (Forensic Evidence) Act, 1990.

(2) In this Act a reference to an offence shall, where the context so requires, be construed as a reference to a suspected offence.

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(3) In this Act a reference to any other enactment shall, save where the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment, including this Act.

(4) In this Act, a reference to a section is a reference to a section of this Act and a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other enactment or provision is intended.

Powers of detention.

2.—(1) (a) Where a member of the Garda Síochána arrests without warrant a person (“the arrested person”) whom he or she, with reasonable cause, suspects of having committed a drug trafficking offence, the arrested person—

(i) may be taken to a Garda Síochána station, and

(ii) if the member of the Garda Síochána in charge of the station has, at the time of the arrested person’s arrival there, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence, may be detained in that station for a period or periods authorised by *subsection (2)*.

(b) Without prejudice to *paragraph (a)*, where a member of the Garda Síochána suspects an arrested person of concealing in his or her person a controlled drug, that person may—

(i) be taken to a place of detention, and

(ii) if a member of the Garda Síochána not below the rank of inspector who is not investigating the drug trafficking offence has, at the time of that person’s arrival there, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the drug trafficking offence, be detained in that place of detention for a period or periods authorised by *subsection (2)*.

(2) (a) The period for which a person may be detained under *subsection (1)* shall, subject to the provisions of this subsection, not exceed 6 hours from the time of his or her arrest.

(b) An officer of the Garda Síochána not below the rank of chief superintendent may direct that a person detained under *subsection (1)* be detained for a further period not exceeding 18 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

(c) An officer of the Garda Síochána not below the rank of chief superintendent may direct that a person detained pursuant to a direction under *paragraph (b)* be detained for a further period not exceeding 24 hours, if he or she has reasonable grounds for believing that such further

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detention is necessary for the proper investigation of the S.2 offence concerned.

- (d) A direction under *paragraph (b) or (c)* may be given orally or in writing and, if given orally, shall be recorded in writing as soon as practicable.
- (e) Where a direction has been given under *paragraph (b) or (c)*, the fact that the direction was given, the date and time when it was given and the name and rank of the officer of the Garda Síochána who gave it shall be recorded.
- (f) The direction or, if it was given orally, the written record of it shall be signed by the officer giving it and—
 - (i) shall state the date and time when it was given, the officer's name and rank and that the officer had reasonable grounds for believing that such further detention was necessary for the proper investigation of the offence concerned, and
 - (ii) shall be attached to and form part of the custody record (within the meaning of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987) in respect of the person concerned.
- (g) (i) An officer of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or a judge of the District Court for a warrant authorising the detention of a person detained pursuant to a direction under *paragraph (c)* for a further period not exceeding 72 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.
 - (ii) On an application under *subparagraph (i)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 72 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.
- (h) (i) An officer of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or a judge of the District Court for a warrant authorising the detention of a person detained under a warrant issued pursuant to *paragraph (g) (ii)* for a further period not exceeding 48 hours, if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.
 - (ii) On an application under *subparagraph (i)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 48 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.

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(3) On an application under *subsection (2)* the person to whom the application relates shall be produced before the judge concerned and the judge shall hear any submissions made and consider any evidence adduced by or on behalf of the person and the officer of the Garda Síochána making the application.

(4) When issuing a warrant under *subsection (2)* the judge concerned may order that the person concerned be brought before a judge of the Circuit Court or a judge of the District Court at a specified time or times during the period of detention specified in the warrant and if, upon the person's being so brought before such a judge, he or she is not satisfied that the person's detention is justified, the judge shall revoke the warrant and order the immediate release from custody of the person.

(5) If at any time during the detention of a person pursuant to this section there are no longer reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence to which the detention relates, he or she shall, subject to *subsection (6)*, be released from custody forthwith unless he or she is charged or caused to be charged with an offence and is brought before a court as soon as may be in connection with such charge or his or her detention is authorised apart from this Act.

(6) If at any time during the detention of a person pursuant to this section a member of the Garda Síochána, with reasonable cause, suspects that person of having committed a drug trafficking offence other than the offence to which the detention relates and—

(a) the member of the Garda Síochána then in charge of the Garda Síochána station, or

(b) in case the person is being detained in a place of detention, a member of the Garda Síochána not below the rank of inspector who is not investigating the offence to which the detention relates or the other offence,

has reasonable grounds for believing that the continued detention of the person is necessary for the proper investigation of that other offence, the person may continue to be detained in relation to the other offence as if that offence was the offence for which the person was originally detained.

(7) To avoid doubt, it is hereby declared that a person shall not be detained pursuant to this section for more than 168 hours from the time of his or her arrest, not including any period which is to be excluded under section 4 (8) of the Act of 1984 (as applied by *section 5*) in reckoning a period of detention.

(8) Nothing in this section shall affect the operation of section 30 of the Act of 1939 or section 4 of the Act of 1984.

(9) (a) The Minister may make regulations prescribing specified places as places where a person may be detained pursuant to *subsection (1) (b)*, and a place for the time being standing so specified is referred to in this Act as a "place of detention".

(b) Section 7 of the Act of 1984 and any regulations made thereunder shall, with any necessary modifications, apply in relation to places of detention as they apply in relation to Garda Síochána stations.

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(10) Every regulation made 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. S.2

3.—The Act of 1990 is hereby amended—

Amendment of Act of 1990.

(a) in section 2—

- (i) by the substitution in subsection (1) for “or section 4 of the Criminal Justice Act, 1984,” of “section 4 of the Criminal Justice Act, 1984, or *section 2* of the *Criminal Justice (Drug Trafficking) Act, 1996*,” and
- (ii) by the insertion in paragraph (b) of subsection (3) after “applies” of “or a drug trafficking offence within the meaning of section 3 (1) of the Criminal Justice Act, 1994”,

and

(b) in section 4, by the substitution in subsection (2) thereof for “or section 4 of the Criminal Justice Act, 1984,” of “section 4 of the Criminal Justice Act, 1984, or *section 2* of the *Criminal Justice (Drug Trafficking) Act, 1996*,”.

4.—(1) Where a person is detained pursuant to *section 2* and is released without any charge having been made against him or her, he or she shall not— Rearrest.

- (a) be arrested again in connection with the offence to which the detention related, or
- (b) be arrested for any other offence which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested suspected, or ought reasonably to have suspected, him or her of having committed,

except under the authority of a warrant issued by a judge of the Circuit Court or a judge of the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that further information has come to the knowledge of the Garda Síochána since the person’s release as to his or her suspected participation in the offence for which his or her arrest is sought.

(2) When issuing a warrant under *subsection (1)*, the judge concerned may order that the person concerned be brought before a judge of the Circuit Court or a judge of the District Court on arrest or at any specified time or times during the period of detention authorised by *section 2* as applied by *subsection (3)* and if, upon the person’s being so brought before such a judge, he or she is not satisfied that the person’s detention is justified, the judge shall revoke the warrant and order the immediate release from custody of the person.

(3) *Section 2* shall apply to a person arrested in connection with an offence to which that section relates under a warrant issued pursuant to *subsection (1)*, as it applies to a person to whom that section applies, with the following and any other necessary modifications:

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(a) the substitution for *paragraphs (c) and (d) in subsection (2) of the following paragraphs:*

“(c) An officer of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or a judge of the District Court for a warrant authorising the detention of a person detained under *paragraph (b)* for a further period not exceeding 24 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

(d) On an application under *paragraph (c)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 24 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.”,

and

(b) the substitution in *paragraph (g) (i) of subsection (2) for “pursuant to a direction under paragraph (c)” of “under a warrant issued pursuant to paragraph (d)”*.

(4) A person arrested in connection with an offence other than one to which *section 2* relates, under a warrant issued pursuant to *subsection (1)*, shall, subject to *subsection (2)*, be dealt with under *section 4* of the Act of 1984 in like manner as a person arrested without warrant to whom the said *section 4* applies.

(5) Notwithstanding *subsection (1)*, a person to whom that subsection relates may be arrested for any offence for the purpose of charging him or her with that offence forthwith.

(6) Where a person who has been arrested under *section 30* of the Act of 1939 or detained under *section 4* of the Act of 1984 in connection with an offence is released without any charge having been made against him or her, he or she shall not be detained pursuant to *section 2*—

(a) in connection with the first-mentioned offence, or

(b) in connection with an offence to which *section 2* relates which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested suspected, or ought reasonably to have suspected, him or her of having committed.

Application of certain provisions of Act of 1984.

5.—Sections 4 (4), 4 (7), 4 (8), 4 (11), 5, 6 (1) to (4) and 8 of the Act of 1984 shall apply with any necessary modifications in relation to persons detained under *section 2* as they apply to persons detained under *section 4* of the Act of 1984.

Regulations regarding officers of customs and excise.

6.—(1) The Minister may, following consultation with the Minister for Finance, make regulations providing for the attendance of an officer of customs and excise at, and the participation of such an officer in, the questioning of a person detained under *section 2* or under *section 4* of the Act of 1984 in relation to a drug trafficking offence.

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(2) An officer of customs and excise may not commit any act or make any omission which, if committed or made by a member of the Garda Síochána, would be a contravention of any regulation made under section 7 of the Act of 1984. S.6

(3) An act committed or omission made by an officer of customs and excise which, if committed or made by a member of the Garda Síochána would be a contravention of any regulation made under the said section 7 shall not of itself render the officer 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) In this section “an officer of customs and excise” means a person appointed by the Revenue Commissioners under the Customs Acts and under the statutes which relate to the duties of excise or any instrument relating to duties of excise made under statute.

(5) A draft of every regulation proposed to be made under this section shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

7.—(1) Where in any proceedings against a person for a drug trafficking offence evidence is given that the accused—

Inferences from failure of accused to mention particular facts.

(a) at any time before he or she was charged with the offence, on being questioned by—

(i) a member of the Garda Síochána, or

(ii) pursuant to regulations made under *section 6*, an officer of customs and excise, within the meaning of that section,

endeavouring to ascertain whether an offence had been committed, or by whom, or

(b) when being charged with the offence or informed by—

(i) a member of the Garda Síochána, or

(ii) pursuant to the said regulations, a said officer of customs and excise,

that he or she might be prosecuted for it,

failed to mention any fact relied on in his or her defence in those proceedings, being a fact which in the circumstances existing at the time he or she could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, then the court, in determining whether to send forward the accused for trial or whether there is a case to answer and the court (or, subject to the judge’s directions, the jury) in determining whether the accused is guilty of the offence charged (or of any other offence of which he or she could lawfully be convicted on that charge) may draw such inferences from the failure as appear proper; and the failure may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to which the failure is material, but a person shall not be convicted of an offence solely on an inference drawn from such failure.

(2) *Subsection (1)* shall not have effect unless the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of such failure might be.

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(3) Nothing in this section shall, in any proceedings—

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his or her presence relating to the conduct in respect of which he or she is charged, in so far as evidence thereof would be admissible apart from this section, or

(b) be taken to preclude the drawing of any inference from the silence or other reaction of the accused which could properly be drawn apart from this section.

(4) This section shall not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

Search warrants.

8.—(1) Subsection (1) of section 26 of the Act of 1977 is hereby amended—

(a) by the insertion after “Garda Síochána” of “or if, subject to the provisions of *subsection (2) of section 8 of the Criminal Justice (Drug Trafficking) Act, 1996*, a member of the Garda Síochána not below the rank of superintendent is satisfied”, and

(b) by the substitution for “such Justice or Commissioner” of “such Justice, Commissioner or, as the case may be, member”.

(2) A member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under the said section 26 unless he or she is satisfied—

(a) that the warrant is necessary for the proper investigation of a drug trafficking offence, and

(b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court or a Peace Commissioner under the said section 26 for the issue of the warrant.

(3) Notwithstanding subsection (2) of section 26 of the Act of 1977, a search warrant issued by a member of the Garda Síochána not below the rank of superintendent under subsection (1) of that section shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

Amendment of
Public Dance Halls
Act, 1935.

9.—The Public Dance Halls Act, 1935, is hereby amended by the insertion after section 13 of the following section:

“13A.—(1) Any member of the Garda Síochána whether in uniform or not may enter any place in respect of which a public dancing licence is for the time being in force at any time while such place is being used for public dancing or at any other reasonable time and there make such inspection, examination and inquiry as he shall think proper for the prevention or detection of a drug trafficking offence within the meaning of section 3 (1) of the Criminal Justice Act, 1994.

(2) Every person who shall prevent or attempt to prevent a member of the Garda Síochána from exercising, or obstruct or attempt to obstruct any such member in the exercise of, a power vested in such member by virtue of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1,000.”.

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10.—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.

11.—(1) Each of the following sections, namely, sections 2, 3, 4, 5 and 6 shall, subject to subsection (2), cease to be in operation at the expiry of 12 months from the date of its commencement unless a resolution has been passed by each House of the Oireachtas resolving that the section shall continue in operation. Duration of certain sections.

(2) A section referred to in subsection (1) may be continued in operation from time to time by a resolution passed by each House of the Oireachtas before its expiry for such period as may be specified in the resolutions.

(3) Before a resolution under this section in relation to a section specified in subsection (1) is passed by either House of the Oireachtas, the Minister shall prepare a report, and shall cause a copy of it to be laid before that House, of the operation of the section during the period beginning on its commencement or, as may be appropriate, the date of the latest previous report under this subsection in relation to that section and ending not more than 21 days before the date of the moving of the resolution in that House.

12.—(1) This Act may be cited as the Criminal Justice (Drug Trafficking) Act, 1996. Short title and commencement.

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

ACTS REFERRED TO

Criminal Justice (Forensic Evidence) Act, 1990	1990, No. 34
Criminal Justice Act, 1984	1984, No. 22
Criminal Justice Act, 1994	1994, No. 15
Misuse of Drugs Act, 1977	1977, No. 12
Offences against the State Act, 1939	1939, No. 13
Public Dance Halls Act, 1935	1935, No. 2

