



Number 29 of 2007

CRIMINAL JUSTICE ACT 2007

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[No. 29.]

Criminal Justice Act 2007.

[2007.]

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Number 29 of 2007

CRIMINAL JUSTICE ACT 2007

AN ACT TO AMEND CERTAIN ENACTMENTS, INCLUDING THE BAIL ACT 1997, THE CRIMINAL JUSTICE ACT 1984, THE CRIMINAL JUSTICE (LEGAL AID) ACT 1962, THE OFFENCES AGAINST THE STATE (AMENDMENT) ACT 1998, THE MISUSE OF DRUGS ACT 1977, THE FIREARMS ACTS 1925 TO 2006, THE GARDA SÍOCHÁNA ACT 2005, THE CRIMINAL JUSTICE ACT 2006, THE CRIMINAL ASSETS BUREAU ACT 1996 AND THE SEA-FISHERIES ACTS 2003 AND 2006, TO AMEND THE LAW IN RELATION TO SENTENCING IN CERTAIN RESPECTS, TO MAKE PROVISION IN RELATION TO THE ADMINISTRATION OF CAUTIONS BY MEMBERS OF THE GARDA SÍOCHÁNA TO PERSONS IN RELATION TO OFFENCES, TO PROVIDE FOR ADDITIONAL POWERS OF DETENTION BY THE GARDA SÍOCHÁNA OF PERSONS SUSPECTED OF CERTAIN OFFENCES FOLLOWING ARREST OR REARREST OF SUCH PERSONS IN CONNECTION WITH THE INVESTIGATION OF SUCH OFFENCES, AND TO PROVIDE FOR RELATED MATTERS.

[9th May, 2007]

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 2007.

Short title,
collective citations,
construction and
commencement.

(2) This Act (other than *Part 8*) comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

(3) The Bail Act 1997 and *Part 2* may be cited together as the Bail Acts 1997 and 2007.

(4) The Misuse of Drugs Acts 1977 to 2006 and *Part 5* may be cited together as the Misuse of Drugs Acts 1977 to 2007 and shall be construed together as one.

(5) The Firearms Acts 1925 to 2006 and *Part 6* may be cited together as the Firearms Acts 1925 to 2007 and shall be construed together as one.

(6) The Garda Síochána Act 2005 and *Part 7* may be cited together as the Garda Síochána Acts 2005 to 2007.

(7) The Sea-Fisheries Acts 2003 and 2006 and *Part 8* may be cited together as the Sea-Fisheries Acts 2003 to 2007.

Definitions.

2.—In this Act—

“Act of 1925” means Firearms Act 1925;

“Act of 1964” means Firearms Act 1964;

“Act of 1967” means Criminal Procedure Act 1967;

“Act of 1984” means Criminal Justice Act 1984;

“Act of 1990” means Firearms and Offensive Weapons Act 1990;

“Act of 1997” means Bail Act 1997;

“Act of 2005” means Garda Síochána Act 2005;

“Act of 2006” means Criminal Justice Act 2006;

“explosive” means an explosive within the meaning of the Explosives Act 1875 and any other substance or thing that is an explosive substance within the meaning of the Explosive Substances Act 1883;

“firearm” has the meaning it has in section 1 of the Act of 1925;

“Minister” means Minister for Justice, Equality and Law Reform.

Repeals.

3.—(1) Subject to *subsection (2)*, the enactments specified in *Schedule 1* are repealed to the extent specified in *column 3* of that Schedule.

(2) The repeal by *subsection (1)* of the enactments specified in *Schedule 1* does not affect the application of those enactments to a failure to mention a fact to which those enactments relate if the failure occurred before the repeal comes into operation, and those enactments apply to such a failure as if they had not been repealed.

Expenses.

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

PART 2

AMENDMENT OF ENACTMENTS RELATING TO BAIL

Amendment of section 1 of Act of 1997.

5.—Section 1 of the Act of 1997 is amended in *subsection (1)* by the insertion of the following definitions:

“ ‘authorised person’ means a person who is appointed in writing by the Minister, or a person who is one of a prescribed class of persons, to be an authorised person for the purposes of sections 6B and 6C;

‘Minister’ means Minister for Justice, Equality and Law Reform;

‘prescribed’ means prescribed by regulations made by the Minister;”.

6.—The Act of 1997 is amended by the insertion of the following section after section 1:

Statement by applicants for bail charged with serious offences.

“1A.—(1) A person who is charged with a serious offence and applies for bail (in this section referred to as ‘the applicant’) shall, subject to subsections (4) and (5)(c), furnish to the prosecutor a written statement duly signed by the applicant and containing the following information relating to the applicant:

- (a) his or her name and any other name or names previously used;
- (b) his or her current occupation and any previous occupation or occupations within the immediately preceding 3 years;
- (c) his or her source or sources of income within the immediately preceding 3 years;
- (d) his or her property, whether wholly or partially owned by, or under the control of, the applicant and whether within or outside the State;
- (e) any previous conviction or convictions of the applicant for a serious offence;
- (f) any previous conviction or convictions of the applicant for an offence or offences committed while on bail;
- (g) any previous application or applications by the person for bail, indicating whether or not it was granted and, if granted, the conditions to which the recognisance was subject.

(2) The statement shall be in the prescribed form or a form to the like effect.

(3) The statement shall be furnished to the prosecutor—

- (a) where written notice of the application for bail is not required, as soon as reasonably practicable before the application is made, or
- (b) where such notice is required, on service of the notice.

(4) The requirement in subsection (1) to furnish a statement may be dispensed with where—

- (a) the prosecutor states an intention to consent to the grant of bail, or

- (b) the applicant and prosecutor consent to dispensing with the requirement.
- (5) The court may by order:
- (a) extend the period for production by the applicant of the statement;
 - (b) adjourn the hearing of the application pending production of the statement;
 - (c) dispense with the need to comply with subsection (1) if satisfied that there is good and sufficient reason for doing so;
 - (d) impose such conditions as it considers just in any order made by it under this section.
- (6) The statement shall be received in evidence without further proof in proceedings under this section if it purports to be signed by the applicant.
- (7) In proceedings under this section any witness may, with the leave of the court, be examined on the content of the statement.
- (8) No information relating to the statement or any part of it shall be published in a written publication available to the public or be broadcast, unless the court otherwise directs.
- (9) The court may, if it considers that publication of any examination of the applicant in relation to the statement or any part of it or of any submissions made to the court may prejudice the applicant's right to a fair trial, by order direct that no information relating to the examination or submissions be published in a written publication available to the public or be broadcast.
- (10) The court, when making an order under subsection (9), may specify the duration of the order and may at any time vary or set aside the order.
- (11) An applicant who knowingly gives false or misleading information or conceals any material fact, either in the statement or in evidence in proceedings under this section, is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.
- (12) Any information contained in the statement is not admissible in evidence in any other proceedings or matter, except in proceedings against the applicant under subsection (11).
- (13) The court may consider an application for bail, notwithstanding a failure by the applicant to furnish the statement.
- (14) Nothing in this section limits the jurisdiction of a court to grant bail.
- (15) Subsection (2) of section 4 applies in relation to the hearing of evidence in relation to the statement and subsections (4) to (7) of that section apply in relation to a contravention

of subsection (8) or (9) of this section, in each case with the necessary modifications.

(16) In this section ‘property’ means—

- (a) cash, money in an account in a financial institution, cheques, bank drafts and transferable securities (including shares, warrants and debentures),
- (b) land,
- (c) mechanically propelled vehicles, and
- (d) any other asset exceeding €3,000 in value.”.

7.—The Act of 1997 is amended by the insertion of the following section after section 2:

Evidence in applications for bail under section 2.

“2A.—(1) Where a member of the Garda Síochána not below the rank of chief superintendent, in giving evidence in proceedings under section 2, states that he or she believes that refusal of the application is reasonably necessary to prevent the commission of a serious offence by that person, the statement is admissible as evidence that refusal of the application is reasonably necessary for that purpose.

(2) Evidence given by such a member in the proceedings is not admissible in any criminal proceedings against the applicant.

(3) The court may, if it considers that publication of evidence given by such a member under subsection (1) or of any part of it may prejudice the accused person’s right to a fair trial, by order direct that no information relating to the evidence or that part, or to any examination of the member, be published in a written publication or be broadcast.

(4) The court, when making an order under subsection (3), may specify the duration of the order and may at any time vary or set aside the order as it sees fit and subject to such conditions as it may impose.

(5) Subsection (2) of section 4 applies in relation to the hearing of the evidence of the member and subsections (4) to (7) of that section apply in relation to a contravention of subsection (3) of this section, in each case with the necessary modifications.

(6) Nothing in this section is to be construed as prejudicing the admission in proceedings under section 2 of other evidence of belief, or of evidence of opinion, whether tendered by any member of the Garda Síochána or other person.

(7) Nothing in this section limits the jurisdiction of a court to grant bail.”.

8.—Section 5 of the Act of 1997 is amended—

Amendment of section 5 of Act of 1997.

- (a) in subsection (1), by the substitution of “any moneys to be paid into court under a recognisance” for “any recognisance”,

- (b) in subsection (2), by the substitution of the following paragraph for paragraph (a):

“(a) Where a court requires payment of moneys into court by a person or any surety as a condition of a recognisance, it may accept as security, in lieu of such payment, any instrument that it considers to be adequate evidence of the title of a person to property (other than land or any estate, right or interest in or over land).”

and

- (c) in subsection (3), by the substitution of “moneys paid” for “recognisance paid”.

Amendment of section 6 of Act of 1997.

9.—Section 6 of the Act of 1997 is amended—

- (a) in subsection (1), by the substitution of the following paragraph for paragraph (a):

“(a) the recognisance shall, in addition to the condition requiring his or her appearance before the court at the end of the period of remand of the accused person, be subject to the condition that the accused person shall not commit an offence while on bail,”

and

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

“(3A) A recognisance referred to in subsection (3) shall contain a statement that the accused person may apply to the court at any time to vary or revoke a condition of the recognisance.”

Application of section 6 in relation to certain appellants.

10.—The Act of 1997 is amended by the insertion of the following section after section 6:

“6A.—Section 6 applies in relation to recognisances entered into by persons appealing against sentences of imprisonment imposed by the District Court with the following modifications:

- (a) by the substitution of the following paragraph for paragraph (a) of subsection (1):

“(a) the recognisance shall be subject to the following conditions, namely, that the appellant shall—

- (i) prosecute the appeal,
- (ii) attend the sittings of the Circuit Court until the appeal has been determined, and
- (iii) not commit an offence while on bail;’

- (b) references in that section to an accused person or a person charged with an offence are to be construed as references to persons so appealing;
- (c) the reference to a court in subsection (8) is to be construed as a reference to the District Court;

and with any other necessary modifications.”.

11.—The Act of 1997 is amended by the insertion of the following section after section 6A:

Electronic monitoring of certain persons admitted to bail.

“6B.—(1) Subject to subsection (2), where a person (in this section referred to as ‘the person’) who—

- (a) is charged with a serious offence or is appealing against a sentence of imprisonment imposed by the District Court, and
- (b) is admitted to bail on entering into a recognisance which is subject to any of the conditions mentioned in subparagraphs (i) and (iv) of section 6(1)(b),

the court may make the recognisance subject to the following further conditions:

- (i) that the person’s movements while on bail are monitored electronically so that his or her compliance or non-compliance with a condition mentioned in any of the said subparagraphs can be established;
- (ii) that for that purpose the person has an electronic monitoring device attached to his or her person, either continuously or for such periods as may be specified; and
- (iii) that an authorised person is responsible for monitoring the person’s compliance or non-compliance with any condition mentioned in the said subparagraphs or in paragraph (ii) of this subsection.

(2) A recognisance shall not be made subject to the further conditions mentioned in subsection (1)—

- (a) if the person is to reside or remain in a particular place, without the consent of the owner of the place or of an adult person habitually residing there, or, as the case may be, of the person in charge of the place, and
- (b) unless the person agrees to comply with those further conditions.

(3) The court shall direct that a copy of the recognisance containing the conditions to which it is subject be given to—

- (a) the person and any surety,
- (b) the member in charge of the Garda Síochána station for the place where the person is residing while the recognisance is in force, and

(c) if an authorised person is to be responsible for monitoring the person's movements electronically, the authorised person.

(4) The court, on application to it by a person whose recognisance is subject to one or more of the conditions or further conditions referred to in subsection (1), may, if it considers it appropriate to do so, vary a condition of the recognisance, whether by altering or revoking it or by adding a further condition to it.

(5) A recognisance referred to in subsection (3) shall contain a statement that the accused person may apply to the court at any time to vary or revoke a condition of the recognisance.

(6) The prosecutor shall be given notice of, and be entitled to be heard in, any proceedings under subsection (4).

(7) Without prejudice to section 6(5), the court may issue a warrant for the arrest of the person on information being made in writing and on oath by an authorised person, any surety or a member of the Garda Síochána that he or she is about to contravene any of the further conditions referred to in paragraph (i) or (ii) of subsection (1).

(8) Subsections (6) to (9) of section 6 apply, with the necessary modifications, in relation to a warrant issued under subsection (7) of this section as if the warrant had been issued under subsection (5) of that section.

(9) This section does not apply in relation to a person under the age of 18 years.”.

Evidence of
electronic
monitoring.

12.—The Act of 1997 is amended by the insertion of the following section after section 6B:

“6C.—(1) Where the movements of a person are subject to electronic monitoring as a condition of the recognisance entered into by the person, evidence of his or her—

- (a) presence or absence in or from a particular district or place at a particular time, or
- (b) compliance or non-compliance with a condition imposed under section 6B(1)(ii) in relation to the wearing of an electronic monitoring device,

may, subject to this section, be given in any proceedings by the production of the following documents:

- (i) a statement purporting to be generated automatically or otherwise by a prescribed device by which the person's whereabouts were electronically monitored;
- (ii) a certificate—
 - (I) that the statement relates to the whereabouts of the person at the dates and times shown in it, and
 - (II) purporting to be signed by an authorised person who is responsible for monitoring electronically

the accused person's compliance with a condition mentioned in subparagraph (i) or (iv) of section 6(1)(b) or in section 6B(1).

(2) Subject to subsection (3), in any proceedings the statement and certificate mentioned in paragraphs (i) and (ii) of subsection (1) are admissible as evidence of the facts contained in them, unless the contrary is shown.

(3) Neither the statement nor the certificate is so admissible unless a copy of it has been served on the person concerned before the commencement of the proceedings concerned.”.

13.—The Act of 1997 is amended by the insertion of the following section after section 6C:

Arrangements for electronic monitoring.

“6D.—The Minister may, with the consent of the Minister for Finance, make such arrangements, including contractual arrangements, as he or she considers appropriate with such persons as he or she thinks fit for monitoring electronically the compliance or non-compliance of persons with a condition mentioned in subparagraph (i) or (iv) of section 6(1)(b) or in section 6B(1)(ii).”.

14.—Section 8 of the Act of 1997 is amended—

Amendment of section 8 of Act of 1997.

- (a) in subsection (1), by the insertion of “(if any)” after “amounts”,
- (b) in subsection (2), by the substitution of “any moneys conditioned to be paid under a recognisance” for “any recognisance”, and
- (c) in subsection (3), by the substitution of “where the courthouse at which the arrested person is conditioned to appear is situate” for “in which the Garda Síochána station is situate”.

15.—The Act of 1997 is amended by the substitution of the following section for section 9:

Estreatment of recognisance and forfeiture of moneys paid into court.

“9.—(1) This section applies where—

- (a) an accused person or a person who is appealing against a sentence of imprisonment imposed by the District Court (in either case referred to in this section as ‘the person’) is admitted to bail on entering into a recognisance conditioned for his or her appearance before a specified court on a specified date at a specified time and place, and
- (b) the person—
 - (i) fails to appear in accordance with the recognisance and the court issues a warrant for his or her arrest, or
 - (ii) is brought before the court in accordance with subsection (7) and the court is satisfied that the person has contravened a condition of the recognisance.

- (2) Where subsection (1) applies, the court may order—
- (a) that any moneys conditioned to be paid under the recognisance by the person or any surety be estreated in such amount and within such period as the court thinks fit,
 - (b) that any sums paid into court by the person or any surety be forfeited in such amount or amounts as the court thinks fit,
 - (c) where a bank, building society, credit union or An Post deposit book has been accepted as security for the amount of the recognisance, that the entity concerned pay into court that amount, or such lesser amount as the court thinks fit, from the moneys held by the person or any surety on deposit therein, and
 - (d) where necessary for estreatment, that a receiver be appointed to take possession or control of the property of the person or any surety and to manage or otherwise deal with it in accordance with the directions of the court.
- (3) Where a receiver—
- (a) appointed under subsection (2)(d) takes any action under this section in relation to property, and
 - (b) believes, and has reasonable grounds for believing, that he or she is entitled to take that action in relation to the property,

he or she shall not be liable to any person in respect of any loss or damage resulting from the action, except in so far as the loss or damage is caused by his or her negligence.

(4) Money recovered by the receiver may, to the extent necessary, be applied to meet expenses incurred in the performance of his or her functions and the remuneration of any person employed in that connection.

(5) The court may, on the application of a member of the Garda Síochána and on information being made in writing and on oath by or on behalf of the member that the person has contravened a condition of the recognisance (other than the condition referred to in subsection (1)(a)), issue a warrant for the arrest of the accused person.

(6) A member of the Garda Síochána may arrest the person under subsection (5) notwithstanding that the member does not have the warrant concerned in his or her possession at the time of the arrest.

(7) Where subsection (6) applies, the member shall serve the warrant on the arrested person as soon as practicable.

(8) The arrested person shall be brought as soon as practicable before the court.

(9) Where a warrant has been issued under subsection (5), the person and any surety remain bound by their recognisances, and any money paid into court in connection therewith shall

not be released before the conclusion of any proceedings under this section.

(10) Where the court makes an order under subsection (2), notice shall be given to the person and any surety stating that an application to vary or discharge the order may be made to the court within 21 days from the date of the issue of the notice.

(11) On such an application, the court may vary or discharge the order if satisfied that compliance with it would cause undue hardship to the person or any surety.

(12) The prosecutor shall be given notice of, and be entitled to be heard in, any proceedings under subsection (11).

(13) If an order under subsection (2)(a) or any variation of it under subsection (11) is not complied with, a warrant of committal of the person for such non-compliance shall be issued by the court and, for the purpose of determining the term of imprisonment to be served by the person, the warrant shall be treated as if it were a warrant for imprisonment for non-payment of a fine equivalent to the amount estreated under the said subsection (2)(a).”.

16.—The Act of 1997 is amended by the insertion of the following section after section 11: Regulations.

“11A.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or for the purpose of enabling any provision of this Act to have full effect.

(2) The regulations may include such consequential, incidental or supplementary provisions as may be necessary for that purpose.

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

17.—The Schedule to the Act of 1997 is amended—

Amendment of
Schedule to Act of
1997.

(a) by the substitution of the following paragraph for paragraph 14:

“14. Any offence under the following provisions of the Firearms Act 1925:

(a) section 2 (restrictions on possession, use, and carriage of firearms);

(b) section 3 (applications for, and form and effect of, firearm certificates);

(c) section 4A(18) (authorisation of rifle or pistol clubs or shooting ranges);

- (d) section 10A (reloading of ammunition);
 - (e) section 15 (possession of firearms with intent to endanger life);
 - (f) section 25 (punishments).”,
- (b) by the substitution of the following paragraph for paragraph 16:
- “16. Any offence under the following provisions of the Firearms and Offensive Weapons Act 1990:
- (a) section 7 (possession, sale, etc., of silencers);
 - (b) section 8 (reckless discharge of firearm);
 - (c) section 9 (possession of knives and other articles);
 - (d) section 10 (trespassing with a knife, weapon of offence or other article);
 - (e) section 11 (production of article capable of inflicting serious injury);
 - (f) section 12 (power to prohibit manufacture, importation, sale, hire or loan of offensive weapons);
 - (g) section 12A (shortening barrel of shotgun or rifle).”,
- (c) by the insertion of the following paragraph after paragraph 16:
- “16A. Any offence under section 3 of the Firearms (Firearm Certificates for Non-Residents) Act 2000 (prohibition of false information and alteration of firearm certificates).”,
- and
- (d) by the substitution of the following paragraph for paragraph 30:
- “30. An offence of attempting or conspiring to commit, or inciting the commission of, any offence mentioned in this Schedule.”.

Amendment of section 22 of Act of 1967.

18.—Section 22 of the Act of 1967 is amended—

- (a) by the insertion of the following subsection after subsection (1):

“(1A) The Court may admit a person to bail without imposing a condition in the recognisance as to payment of moneys into court by the person if it considers it appropriate to do so, having regard to the circumstances of the case, including the means of the person and the nature of the offence in relation to which the person is in custody.”,
- (b) by the substitution of the following subsections for subsections (2) and (3):

“(2) The Court may, instead of taking a recognisance from a person in accordance with subsection (1)—

(a) determine the conditions to be contained in the recognisance, including the amount of any moneys to be paid into court under it, with a view to its being subsequently taken, and

(b) in the meantime commit the person concerned to custody in accordance with paragraph (a) of that subsection.

(3) A recognisance referred to in subsection (2) may be taken by any judge of the District Court.”.

19.—Section 28 of the Act of 1967 is amended by the substitution of the following subsection for subsection (3):

Amendment of section 28 of Act of 1967.

“(3) (a) An applicant for bail or the prosecutor may appeal to the High Court if dissatisfied with a refusal or grant of the application for bail or, where bail is granted, with any matter relating to the bail.

(b) Where the applicant has been remanded in custody by the District Court and the offence with which the applicant is charged is triable by the Circuit Court, the High Court may transfer the appeal to the judge of the Circuit Court for the circuit in which the prison or place of detention to which the applicant has been remanded is situated.

(c) The judge of the Circuit Court referred to in paragraph (b) shall exercise jurisdiction in respect of the appeal.

(d) An appeal against a decision by the Circuit Court under this section lies to the High Court at the instance of the applicant or prosecutor.”.

20.—Section 31 of the Act of 1967 is amended by the substitution of the following subsection for subsection (3):

Amendment of section 31 of Act of 1967.

“(3) If the recognisance is conditioned for the payment of a sum of money, that sum may be accepted in lieu of a surety or sureties.”.

21.—Section 68 of the Children Act 2001 is amended by the substitution of the following subsection for subsection (4):

Amendment of section 68 of Children Act 2001.

“(4) If the recognisance is conditioned for the payment of a sum of money, that sum may be accepted in lieu of a surety or sureties.”.

22.—Section 11 of the Act of 1984 is amended by the substitution of the following subsection for subsection (1):

Amendment of section 11 of Act of 1984.

“(1) Any sentence of imprisonment passed on a person for an offence—

- (a) committed while on bail, whether committed before or after the commencement of *section 22* of the *Criminal Justice Act 2007*, or
- (b) committed after such commencement while the person is unlawfully at large after the issue of a warrant for his or her arrest for non-compliance with a condition of the recognisance concerned,

shall be consecutive on any sentence passed on him or her for a previous offence or, if he or she is sentenced in respect of two or more previous offences, on the sentence last due to expire, so however that, where two or more consecutive sentences as required by this section are passed by the District Court, the aggregate term of imprisonment in respect of those consecutive sentences shall not exceed 2 years.”.

Amendment of section 13 of Act of 1984.

23.—Section 13 of the Act of 1984 is amended—

- (a) in subsection (1), by the substitution of “€5,000” for “£1,000”, and
- (b) by the addition of the following subsection:

“(6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 12 months from the date on which the offence was committed.”.

PART 3

SENTENCING

Interpretation (*Part 3*).

24.—(1) In this Part—

“imprisonment” includes—

- (a) detention in Saint Patrick’s Institution,
- (b) detention in a place provided under section 2 of the Prisons Act 1970, and
- (c) detention in a place specified under section 3 of the Prisons Act 1972,

and “prison” and “sentence of imprisonment” shall be construed accordingly;

“remission from the sentence” means, in relation to the sentence imposed on a person, the remission which he or she may earn from that sentence under the rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct.

(2) In this Part, references to an offence specified in *Schedule 2* shall include—

- (a) references to participation as an accomplice of a person who commits such an offence, and

- (b) references to an offence of attempting or conspiring to commit, or inciting the commission of, such an offence.

25.—(1) Subject to *subsections (2) and (3)*, where a person (other than a person under the age of 18 years)—

Commission of another offence within specified period.

- (a) has been convicted on indictment of an offence specified in *Schedule 2* (in this section referred to as “the first offence”),
- (b) has been sentenced to imprisonment for a term of not less than 5 years in respect of that offence, and
- (c) who is convicted on indictment of an offence specified in *Schedule 2* (in this section referred to as “the subsequent offence”) that is committed—
- (i) during the period of 7 years from the date of conviction of the first offence and, for the purpose of determining that period, there shall be disregarded any period of imprisonment in respect of the first offence or the subsequent offence, or
- (ii) during any such period of imprisonment,

(in this section the total period comprising the periods referred to in subparagraphs (i) and (ii) is referred to as “the specified period”),

the court shall, in imposing sentence on the person in respect of the subsequent offence, specify as the minimum term of imprisonment to be served by the person, a term of not less than three quarters of the maximum term of imprisonment prescribed by law in respect of such an offence and, if the maximum term so prescribed is life imprisonment, the court shall specify a term of imprisonment of not less than 10 years.

(2) *Subsection (1)* shall not apply if any of the following provisions apply in respect of the subsequent offence:

- (a) section 2 of the Criminal Justice Act 1990;
- (b) section 15(8) of the Act of 1925;
- (c) section 26(8), 27(8), 27A(8) or 27B(8) of the Act of 1964;
- (d) section 12A(13) of the Act of 1990; or
- (e) section 27(3F) of the Misuse of Drugs Act 1977.

(3) *Subsection (1)* shall not apply where the court is satisfied that it would be disproportionate in all the circumstances of the case to specify as the minimum term of imprisonment to be served by the person concerned the term of imprisonment referred to in that subsection in respect of the subsequent offence.

(4) *Subsection (1)* shall apply to a person in respect of the subsequent offence only if that offence is committed after the commencement of this section and that subsection shall apply to a person whether the first offence is committed before or after such commencement.

(5) If, in relation to a sentence of a term of imprisonment imposed on a person in respect of the first offence—

- (a) the operation of the whole term is suspended, then *subsection (1)* shall not apply to that offence, or
- (b) the operation of a part of the term is suspended, the part of that term the operation of which is not suspended shall be regarded as the term of imprisonment imposed on the person in respect of the first offence for the purposes of *subsection (1)*.

(6) *Subsection (1)* shall not apply to a person if the conviction in respect of the first offence is quashed on appeal or otherwise.

(7) A reference in this section to a sentence imposed on a person in respect of the first offence shall—

- (a) if the sentence is varied on appeal, be construed as a reference to the sentence as so varied, or
- (b) if, on the application of the Director of Public Prosecutions under section 2 of the Criminal Justice Act 1993, the sentence is quashed by the Court of Criminal Appeal and another sentence is imposed in place of it by that Court on the person, be construed as a reference to that other sentence.

(8) For the purposes of *subsections (1)(c)* and *(10)*, a period of imprisonment means any time when the person concerned is—

- (a) remanded in custody,
- (b) serving a sentence in prison, or
- (c) temporarily released under section 2 of the Criminal Justice Act 1960.

(9) References in this section to the subsequent offence shall include references to a second or subsequent offence specified in *Schedule 2* of which a person (other than a person under the age of 18 years) is convicted on indictment during the specified period.

(10) The specified period in relation to a person to whom *subsection (1)* applies shall expire only when the person has not been convicted of an offence specified in *Schedule 2*—

- (a) during the period of 7 years from the date of conviction of the subsequent offence and, for the purpose of determining that period, there shall be disregarded any period of imprisonment in respect of the first offence or the subsequent offence, or
- (b) during any such period of imprisonment.

(11) If, following the application of *subsection (1)* to a person in respect of a conviction on indictment of an offence specified in *Schedule 2*—

- (a) his or her conviction in respect of the first offence is quashed on appeal or otherwise, or

- (b) the sentence imposed on the person in respect of the first offence is varied on appeal so that it no longer falls under *subsection (1)(b)*,

the person may apply to the court that imposed the sentence on him or her in respect of the subsequent offence to review it and the court may, if it considers it appropriate to do so, vary that sentence.

- (12) (a) If a sentence imposed on a person in respect of a conviction on indictment of an offence specified in *Schedule 2* does not fall under *subsection (1)(b)* but the sentence is—

(i) varied on appeal, or

- (ii) on the application of the Director of Public Prosecutions under section 2 of the Criminal Justice Act 1993, quashed by the Court of Criminal Appeal and another sentence is imposed in place of it by that Court on the person,

so that the sentence then falls under *subsection (1)(b)*, *subsection (1)* shall apply in respect of an offence specified in *Schedule 2* (“the subsequent offence”) committed by the person within the specified period.

- (b) If, in the circumstances referred to in *paragraph (a)*, a sentence has, at the time of the appeal referred to in *subparagraph (i)* of that paragraph concerned or, as the case may be, the application referred to in *subparagraph (ii)* of that paragraph concerned, been imposed on the person concerned in respect of the subsequent offence, the Director of Public Prosecutions may apply to the court that imposed the sentence to review it and the court shall apply *subsection (1)* to that person in respect of the subsequent offence and, if appropriate, vary the sentence accordingly.

(13) The power conferred by section 23 of the Criminal Justice Act 1951 to commute or remit a punishment shall not, in the case of a person serving a sentence of imprisonment imposed in accordance with *subsection (1)* in respect of the subsequent offence, be exercised before the expiry of the minimum term of imprisonment specified by the court in accordance with that subsection less any reduction of that term arising under *subsection (14)*.

(14) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence imposed in accordance with *subsection (1)* in respect of the subsequent offence and the minimum term of imprisonment specified by the court in accordance with that subsection shall be reduced by the amount of any remission so earned by the person.

(15) Any powers conferred by rules made under section 2 of the Criminal Justice Act 1960 to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a sentence imposed in accordance with *subsection (1)* in respect of the subsequent offence, be exercised during the period for which the commutation or remission of his or her punishment is prohibited by *subsection (13)* unless for grave reason of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by that reason.

(16) The reference in *subsection (15)* to section 2 of the Criminal Justice Act 1960 shall be construed to include that section as applied by section 4 of the Prisons Act 1970.

Monitoring orders
and protection of
persons orders.

26.—(1) Where a person (other than a person under the age of 18 years) (in this section referred to as “the offender”) is convicted on indictment of an offence specified in *Schedule 2*, the court shall consider whether it is appropriate to make an order or orders under this section in relation to the offender for the purpose of monitoring the offender after release from prison or for the purpose of protecting any person.

(2) The court may make an order (in this section referred to as a “monitoring order”) in relation to the offender requiring the offender, as soon as practicable after the order comes into force, to notify in writing an inspector of the Garda Síochána of the district in which his or her home is located of the address of it and to notify in writing such an inspector of any change of address of his or her home or any proposed absence for a period of more than 7 days from his or her home before any such change of address or any such absence, as the case may be, occurs.

(3) A monitoring order may be made for such period, not exceeding 7 years, as the court considers appropriate.

(4) The court may make an order (in this section referred to as a “protection of persons order”) in relation to the offender for the purpose of protecting the victim of the offence concerned or any other person named in the order from harassment by the offender while the order is in force.

(5) The court may provide in a protection of persons order that the offender is prohibited from engaging in any behaviour that, in the opinion of the court, would be likely to cause the victim of the offence concerned or any other person named in the order fear, distress or alarm or would be likely to amount to intimidation of any such person.

(6) A protection of persons order may be made for such period, not exceeding 7 years, as the court considers appropriate.

(7) A monitoring order or a protection of persons order in relation to the offender shall come into force on the date on which—

- (a) the sentence of imprisonment imposed on him or her in respect of the offence concerned expires or, as the case may be, his or her remission from the sentence begins, or
- (b) if the offender is imprisoned in respect of another offence, the date on which that sentence of imprisonment expires or, as the case may be, his or her remission from that sentence begins,

whichever is the later.

(8) Where a monitoring order or a protection of persons order is made (whether or not it is in force), the court that made the order may, if it so thinks proper, on the application of the offender vary or revoke the order if it is satisfied that by reason of such matters or circumstances specified in the application that have arisen or occurred since the making of the order that it should be varied or revoked.

(9) An application under *subsection (8)* shall be made on notice to an inspector of the Garda Síochána of the district in which the offender ordinarily resided at the time that the order was made or, if appropriate, an inspector of the Garda Síochána of the district in which the home of the offender is located at the time of the application.

(10) A person who fails, without reasonable cause, to comply with a monitoring order or a protection of persons order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 or imprisonment for a term not exceeding 6 months or both.

(11) Nothing in this section shall affect any other order, restriction or obligation, or any condition attaching thereto, to which the offender is subject whether made or imposed under statute or otherwise apart from this section while a monitoring order or a protection of persons order is in force.

(12) In this section “home”, in relation to the offender, means his or her sole or main residence or, if he or she has no such residence, his or her most usual place of abode or, if he or she has no such abode, the place which he or she regularly visits.

27.—The Criminal Justice (Legal Aid) Act 1962 is amended—

Amendment of
Criminal Justice
(Legal Aid) Act
1962.

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

“Legal aid
(monitoring
order)
certificate.

6A.—(1) Where—

(a) a monitoring order has been made in relation to a person, and

(b) a certificate for free legal aid (in this Act referred to as a ‘legal aid (monitoring order) certificate’) is granted in respect of him or her by the court to which an application is made to vary or revoke the order,

the person shall be entitled to free legal aid in the preparation and conduct of an application under *section 26(8)* of the *Criminal Justice Act 2007* to vary or revoke the order and to have a solicitor and, if the court considers it appropriate, counsel assigned to him or her for that purpose in such manner as may be prescribed by regulations under *section 10* of this Act.

(2) A legal aid (monitoring order) certificate shall be granted in relation to a person in respect of whom a monitoring order has been made if (but only if)—

(a) application is made therefor,

(b) it appears to the court to which the application is made to vary or revoke the order that—

- (i) the means of the person are insufficient to enable him or her to obtain legal aid, and
- (ii) by reason of the conditions specified in the order or of exceptional circumstances, it is essential in the interests of justice that the person should have legal aid in the preparation and conduct of the application to vary or revoke the order.

(3) In this section ‘monitoring order’ has the meaning it has in *section 26* of the *Criminal Justice Act 2007*.

Legal aid
(protection of
persons order)
certificate.

6B.—(1) Where—

- (a) a protection of persons order has been made in relation to a person, and
- (b) a certificate for free legal aid (in this Act referred to as a ‘legal aid (protection of persons order) certificate’) is granted in respect of him or her by the court to which an application is made to vary or revoke the order,

the person shall be entitled to free legal aid in the preparation and conduct of an application under *section 26(8)* of the *Criminal Justice Act 2007* to vary or revoke the order and to have a solicitor and, if the court considers it appropriate, counsel assigned to him or her for that purpose in such manner as may be prescribed by regulations under *section 10* of this Act.

(2) A legal aid (protection of persons order) certificate shall be granted in respect of a person in relation to whom a protection of persons order has been made if (but only if)—

- (a) application is made therefor,
- (b) it appears to the court to which the application is made to vary or revoke the order that—
 - (i) the means of the person are insufficient to enable him or her to obtain legal aid, and
 - (ii) by reason of the conditions specified in the order or of

exceptional circumstances, it is essential in the interests of justice that the person should have legal aid in the preparation and conduct of the application to vary or revoke the order.

(3) In this section ‘protection of persons order’ has the meaning it has in *section 26* of the *Criminal Justice Act 2007.*”

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

“(3) Where a legal aid (monitoring order) certificate or a legal aid (protection of persons order) certificate has been granted in respect of a person, any fees, costs or other expenses properly incurred in preparing and conducting the person’s application to vary or revoke the monitoring order or the protection of persons order to which the certificate relates shall, subject to the regulations under section 10 of this Act, be paid out of moneys provided by the Oireachtas.”

and

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

PART 4

INFERENCES TO BE DRAWN IN CERTAIN CIRCUMSTANCES

28.—(1) The Act of 1984 is amended by the substitution of the following section for section 18:

Inferences from failure or refusal to account for objects, marks, etc.

“18.—(1) Where in any proceedings against a person for an arrestable offence evidence is given that the accused—

- (a) at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, or
- (b) when being charged with the offence or informed by a member of the Garda Síochána that he or she might be prosecuted for it,

was requested by the member to account for any object, substance or mark, or any mark on any such object, that was—

- (i) on his or her person,
- (ii) in or on his or her clothing or footwear,
- (iii) otherwise in his or her possession, or
- (iv) in any place in which he or she was during any specified period,

and which the member reasonably believes may be attributable to the participation of the accused in the commission of the offence and the member informed the accused that he or she so believes, and the accused failed or refused to give an account, being an account which in the circumstances at the time clearly called for an explanation from him or her when so questioned, charged or informed, as the case may be, then, the court, in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967 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 or refusal as appear proper; and the failure or refusal 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 or refusal is material.

(2) A person shall not be convicted of an offence solely or mainly on an inference drawn from a failure or refusal to account for a matter to which subsection (1) applies.

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

- (a) the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of the failure or refusal to account for a matter to which that subsection applies might be, and
- (b) the accused was afforded a reasonable opportunity to consult a solicitor before such failure or refusal occurred.

(4) 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,
- (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, or
- (c) be taken to preclude the drawing of any inference from a failure or refusal to account for the presence of an object, substance or mark or for the condition of clothing or footwear which could properly be drawn apart from this section.

(5) The court (or, subject to the judge's directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to whenever, if appropriate, the account of the matter concerned was first given by the accused.

(6) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

(7) Subsection (1) shall apply to the condition of clothing or footwear as it applies to a substance or mark thereon.

(8) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.

(9) In this section ‘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.”

(2) This section shall not apply to a failure or refusal to account for the presence of an object, substance or mark or for the condition of clothing or footwear if the failure or refusal occurred before the commencement of this section.

(3) *Subsection (1)* shall not affect the application of section 18 of the Act of 1984 to a failure or refusal to account for the presence of an object, substance or mark or for the condition of clothing or footwear if the failure or refusal occurred before the commencement of this section, and that section shall apply to such a failure or refusal as if *subsection (1)* had not been enacted.

29.—(1) The Act of 1984 is amended by the substitution of the following section for section 19:

“19.—(1) Where in any proceedings against a person for an arrestable offence evidence is given that the accused—

(a) at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, or

(b) when being charged with the offence or informed by a member of the Garda Síochána that he or she might be prosecuted for it,

was requested by the member to account for his or her presence at a particular place at or about the time the offence is alleged to have been committed, and the member reasonably believes that the presence of the accused at that place and at that time may be attributable to his or her participation in the commission of the offence and the member informed the accused that he or she so believes, and the accused failed or refused to give an account, being an account which in the circumstances at the time clearly called for an explanation from him or her when so questioned, charged or informed, as the case may be, then, the court, in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967 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 or refusal as appear proper; and the failure or refusal 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 or refusal is material.

(2) A person shall not be convicted of an offence solely or mainly on an inference drawn from a failure or refusal to

Inferences from failure or refusal to account for accused’s presence at a particular place.

account for his or her presence at a particular place under subsection (1).

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

- (a) the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of the failure or refusal to account for his or her presence at a particular place might be, and
- (b) the accused was afforded a reasonable opportunity to consult a solicitor before such failure or refusal occurred.

(4) 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,
- (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, or
- (c) be taken to preclude the drawing of any inference from the failure or refusal of a person to account for his or her presence which could properly be drawn apart from this section.

(5) The court (or, subject to the judge's directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to whenever, if appropriate, the account of his or her presence at a particular place concerned was first given by the accused.

(6) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

(7) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.

(8) In this section '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."

(2) This section shall not apply to a failure or refusal of a person to account for his or her presence if the failure or refusal occurred before the commencement of this section.

(3) *Subsection (1)* shall not affect the application of section 19 of the Act of 1984 to a failure or refusal of a person to account for his

or her presence if the failure or refusal occurred before the commencement of this section, and that section shall apply to such a failure or refusal as if *subsection (1)* had not been enacted.

30.—The Act of 1984 is amended by the insertion of the following section after section 19:

Inferences from failure of accused to mention particular facts.

“19A.—(1) Where in any proceedings against a person for an arrestable offence evidence is given that the accused—

- (a) at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, or
- (b) when being charged with the offence or informed by a member of the Garda Síochána 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 clearly called for an explanation from him or her when so questioned, charged or informed, as the case may be, then, the court, in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967 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.

(2) A person shall not be convicted of an offence solely or mainly on an inference drawn from a failure to mention a fact to which subsection (1) applies.

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

- (a) the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of the failure to mention a fact to which that subsection applies might be, and
- (b) the accused was afforded a reasonable opportunity to consult a solicitor before such failure occurred.

(4) 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.

(5) The court (or, subject to the judge’s directions, the jury) shall, for the purposes of drawing an inference under this section, have regard to when the fact concerned was first mentioned by the accused.

(6) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

(7) Subject to section 7 of the Criminal Justice (Drug Trafficking) Act 1996 and section 5 of the Offences Against the State (Amendment) Act 1998, this section shall not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

(8) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.

(9) In this section ‘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.”.

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

31.—(1) Section 2 of the Offences Against the State (Amendment) Act 1998 is amended—

(a) in subsection (1), by—

(i) the substitution of “in determining whether a charge should be dismissed under Part IA of the Criminal Procedure Act 1967” for “in determining whether to send forward the accused for trial”, and

(ii) the substitution of “a person shall not be convicted of the offence solely or mainly on an inference drawn from such a failure” for “a person shall not be convicted of the offence solely on an inference drawn from such a failure”,

(b) by the substitution of the following subsection for subsection (2):

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

(a) the accused was told in ordinary language when being questioned what the effect of such a failure might be, and

(b) the accused was afforded a reasonable opportunity to consult a solicitor before such a failure occurred.”,

and

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

“(3A) The court (or, subject to the judge’s directions, the jury) shall, for the purposes of drawing an inference

under this section, have regard to whenever, if appropriate, an answer to the question concerned was first given by the accused.

(3B) This section shall not apply in relation to the questioning of a person by a member of the Garda Síochána unless it is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

(3C) References in subsection (1) to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.”.

(2) This section shall not apply to a failure to answer a question to which section 2 of the Offences Against the State (Amendment) Act 1998 relates if the failure occurred before the commencement of this section.

32.—(1) The Minister may make regulations providing for the administration of cautions by members of the Garda Síochána to persons in relation to offences. Regulations.

(2) The regulations may include provision for—

(a) the form of caution to be administered to a person—

- (i) at any time before the person is charged with an offence, on being questioned by a member of the Garda Síochána in relation to the offence,
- (ii) when the person is being charged with an offence or informed by a member of the Garda Síochána that he or she might be prosecuted for it, or
- (iii) in any other circumstances in which a caution is required, and

(b) the procedures that are to apply in circumstances where a person to whom a caution has been administered is to have the caution withdrawn and a different caution administered to him or her.

(3) Regulations under this section may provide for different forms of caution to be administered to a person in different circumstances and in different classes of cases.

(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 member liable to any criminal or civil proceedings or of itself affect the admissibility in evidence of anything said by, or the silence of, a person to whom *subsection (2)(a)* applies.

(5) 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.

(6) 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.

PART 5

MISUSE OF DRUGS

Amendment of
section 27 of Misuse
of Drugs Act 1977.

33.—Section 27 of the Misuse of Drugs Act 1977 is amended by the substitution of the following subsections for subsections (3A) to (3K):

“(3A) Every person guilty of an offence under section 15A or 15B of this Act shall be liable, on conviction on indictment—

- (a) to imprisonment for life or such shorter term as the court may determine, subject to subsections (3C) and (3D) of this section or, where subsection (3F) of this section applies, to that subsection, and
- (b) at the court’s discretion, to a fine of such amount as the court considers appropriate.

(3B) The court, in imposing sentence on a person for an offence under section 15A or 15B of this Act, may, in particular, have regard to whether the person has a previous conviction for a drug trafficking offence.

(3C) Where a person (other than a person under the age of 18 years) is convicted of an offence under section 15A or 15B of this Act, the court shall, in imposing sentence, specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person.

(3D) (a) The purpose of this subsection is to provide that in view of the harm caused to society by drug trafficking, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under section 15A or 15B of this Act, shall specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of the offence, it would be unjust in all the circumstances to do so.

(b) Subsection (3C) of this section shall not apply where the court is satisfied that there are exceptional and specific circumstances relating to the offence, or the person convicted of the offence, which would make a sentence of not less than 10 years imprisonment unjust in all the circumstances and for that purpose the court may, subject to this subsection, have regard to any matters it considers appropriate, including—

(i) whether that person pleaded guilty to the offence and, if so—

(I) the stage at which he or she indicated the intention to plead guilty, and

(II) the circumstances in which the indication was given,

and

- (ii) whether that person materially assisted in the investigation of the offence.
- (c) The court, in considering for the purposes of paragraph (b) of this subsection whether a sentence of not less than 10 years imprisonment is unjust in all the circumstances, may have regard, in particular, to—
- (i) whether the person convicted of the offence concerned was previously convicted of a drug trafficking offence, and
 - (ii) whether the public interest in preventing drug trafficking would be served by the imposition of a lesser sentence.

(3E) Subsections (3C) and (3D) of this section apply and have effect only in relation to a person convicted of a first offence under section 15A or 15B of this Act (other than a person who falls under paragraph (b) of subsection (3F) of this section), and accordingly references in those first-mentioned subsections to an offence under section 15A or 15B of this Act are to be construed as references to a first such offence.

(3F) Where a person (other than a person under the age of 18 years)—

- (a) is convicted of a second or subsequent offence under section 15A or 15B of this Act, or
- (b) is convicted of a first offence under one of those sections and has been convicted under the other of those sections,

the court shall, in imposing sentence, specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person.

(3G) The power conferred by section 23 of the Criminal Justice Act 1951 to commute or remit a punishment shall not, in the case of a person serving a sentence imposed under subsection (3A) of this section, be exercised before the expiry of the minimum term specified by the court under subsection (3C) or (3F), as may be appropriate, of this section less any reduction of that term under subsection (3H) of this section.

(3H) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence imposed under subsection (3A) of this section and the minimum term specified by the court under subsection (3C) of this section shall be reduced by the amount of any remission so earned by the person.

(3I) Any powers conferred by rules made under section 2 of the Criminal Justice Act 1960 to release temporarily a person serving a sentence of imprisonment shall not, in the case of a

person serving a sentence imposed under subsection (3A) of this section, be exercised during the term for which the commutation or remission of his or her punishment is prohibited by subsection (3G) of this section unless for a grave reason of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by such reason.

(3J) In imposing a sentence on a person convicted of an offence under section 15A or 15B of this Act, a court—

- (a) may inquire whether at the time of the commission of the offence the person was addicted to one or more controlled drugs, and
- (b) if satisfied that the person was so addicted at that time and that the addiction was a substantial factor leading to the commission of the offence, may list the sentence for review after the expiry of not less than one-half of the term specified by the court under subsection (3C) or (3F), as may be appropriate, of this section.

(3K) On reviewing a sentence listed under subsection (3J)(b) of this section, the court—

- (a) may suspend the remainder of the sentence on any conditions it considers fit, and
- (b) in deciding whether to exercise its powers under this subsection, may have regard to any matters it considers appropriate.

(3L) Paragraph (a) of section 13(2) of the Criminal Procedure Act 1967 shall not apply in relation to an offence under section 15A or 15B of this Act, but each of those offences shall be deemed for the purposes of paragraph (b) of section 13(2) of that Act to be an offence to which section 13 of that Act applies.

(3M) The reference in subsection (3I) of this section to section 2 of the Criminal Justice Act 1960 shall be construed to include that section as applied by section 4 of the Prisons Act 1970.

(3N) In subsections (3B) and (3D) of this section ‘drug trafficking offence’ has the meaning it has in section 3(1) of the Criminal Justice Act 1994 and in subsection (3D) of this section ‘drug trafficking’ has the meaning it has in the said section 3(1).”.

PART 6

AMENDMENT OF FIREARMS ACTS 1925 TO 2006

Amendment of section 2 of Act of 1925.

34.—Section 2 of the Act of 1925 is amended—

- (a) in subsection (5)(a), by the substitution of “, (j) or (k)” for “or (j)”, and
- (b) by the insertion of the following subsection after subsection (6):

“(7) The superintendent of any district may authorise the Board of the National Museum in writing to possess for a specified period a firearm that is a museum heritage object within the meaning of the National Cultural Institutions Act 1997.”.

35.—Section 15 of the Act of 1925 is amended—

Amendment of section 15 of Act of 1925.

- (a) by the insertion of the following subsection after subsection (4):

“(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (except a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 10 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

- (b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

36.—Section 26 of the Act of 1964 is amended—

Amendment of section 26 of Act of 1964.

- (a) by the insertion of the following subsection after subsection (4):

“(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

- (b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

37.—Section 27 of the Act of 1964 is amended—

Amendment of section 27 of Act of 1964.

- (a) by the insertion of the following subsection after subsection (4):

“(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this

section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 10 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

- (b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

Amendment of section 27A of Act of 1964.

38.—Section 27A of the Act of 1964 is amended—

- (a) in subsection (1), by the insertion of “or ammunition” after “firearm”,

- (b) by the insertion of the following subsection after subsection (4):

“(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

- (c) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

Amendment of section 27B of Act of 1964.

39.—Section 27B of the Act of 1964 is amended—

- (a) by the insertion of the following subsection after subsection (4):

“(4A) The purpose of subsections (5) and (6) of this section is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

and

- (b) in subsection (5), by the insertion of “, subject to subsection (6),” after “and for this purpose the court may”.

40.—Section 12A of the Act of 1990 is amended—

Amendment of section 12A of Act of 1990.

- (a) by the insertion of the following subsection after subsection (9):

“(9A) The purpose of subsections (10) and (11) is to provide that in view of the harm caused to society by the unlawful possession and use of firearms, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under this section, shall specify as the minimum term of imprisonment to be served by the person a term of not less than 5 years, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of it, it would be unjust in all the circumstances to do so.”,

- (b) in subsection (10), by the insertion of “, subject to subsection (11),” after “and for this purpose the court may”, and
- (c) in subsection (13)(b), by the insertion of “27” after “section 26,”.

PART 7

AMENDMENT OF GARDA SÍOCHÁNA ACT 2005

41.—The Act of 2005 is amended by the insertion of the following Chapter after section 33:

Establishment and functions of Garda Síochána Executive Management Board.

“CHAPTER 3A

Establishment and functions of Garda Síochána Executive Management Board

Establishment day. 33A.—The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Chapter.

Establishment of Garda Síochána Executive Management Board. 33B.—On the establishment day, a body to be known as An Bord Bainistíochta Feidhmiúcháin an Gharda Síochána or, in the English language, the Garda Síochána Executive Management Board (in this Chapter referred to as “the Board”) stands established to perform the function assigned to it by this Chapter.

Membership of Board. 33C.—(1) The Board consists of—

- (a) executive members who are responsible for performing the Board’s function, and

(b) 3 non-executive members, who participate in an advisory capacity in relation to the performance of that function.

(2) The executive members of the Board are—

(a) the Garda Commissioner, who is its chairperson,

(b) the Deputy Garda Commissioners, and

(c) a member of the civilian staff of the Garda Síochána of a grade equivalent to that of Deputy Garda Commissioner.

(3) The non-executive members of the Board are persons who are not serving or former members of the Garda Síochána or its civilian staff.

(4) At least one of the non-executive members of the Board shall be a woman and at least one of them shall be a man.

Appointment,
etc., of non-
executive
members.

33D.—(1) The non-executive members of the Board shall—

(a) be appointed by the Government on the nomination of the Minister,

(b) be persons who have expertise in the strategic and financial management of organisations, the management of their human resources or the planning and review functions relating to them or have other relevant experience, and

(c) serve on the Board in a non-executive capacity to provide advice in relation to annual policing plans, budgetary matters, allocation of resources, technology, equipment, setting of targets, training, development and leadership and other related matters.

(2) Subject to subsection (5), a non-executive member holds office for a period of 4 years and is eligible for re-appointment for a second term.

(3) The terms and conditions of appointment of non-executive members, including those relating to remuneration, shall be determined by the Minister in consultation with the Minister for Finance.

(4) A non-executive member may at any time resign his or her office by letter addressed to the Minister, and the resignation takes effect on the date of receipt of the letter.

(5) A non-executive member may be removed from office by the Government for stated reasons or if in the opinion of the Government the

member has become incapable through ill health or incapacity of effectively performing the duties of the office.

(6) Whenever the number of non-executive members falls below 3, the vacancy or vacancies shall be filled by appointment in accordance with subsection (1).

(7) A non-executive member who is appointed to fill a vacancy holds office for the remainder of the term of office of the replaced member.

(8) The Board may act notwithstanding any such vacancy or any resulting non-compliance with section 33C(4).

(9) A person ceases to be a non-executive member as soon as he or she—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or of the European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority.

Function of Board.

33E.—(1) The function of the Board is to keep under review the performance by the Garda Síochána of its functions and the arrangements and strategies in place to support and enhance the performance of those functions.

(2) In particular, the Board shall keep under review the adequacy of—

- (a) the performance by the Garda Síochána of its functions,
- (b) the arrangements and strategies in place to support and enhance that performance,
- (c) the corporate governance arrangements and structures within the Garda Síochána,
- (d) the arrangements for the recruitment, training and development of the members and civilian staff of the Garda Síochána, and
- (e) the mechanisms in place within the Garda Síochána for the measurement

of performance and accountability of such members and staff.

Provision of information to non-executive members by Garda Commissioner. 33F.—The Garda Commissioner shall make available to the non-executive members of the Board any information which is relevant to the performance of their functions.

Reports to Minister. 33G.—(1) The Board shall furnish to the Minister, at six-monthly intervals, a report on the performance of its function.

(2) The Minister shall cause a copy of the report to be laid before each House of the Oireachtas as soon as may be after its receipt.

Saving. 33H.—The performance by the Board of its function is without prejudice to, and in no way limits, the performance by the Garda Commissioner of his or her functions under section 26 or his or her accountability for the direction, control, management and operational efficiency of the Garda Síochána.”.

Special inquiries relating to Garda Síochána.

42.—The Act of 2005 is amended by the substitution of the following section for section 42:

“Special inquiries relating to Garda Síochána.

42.—(1) The Minister, with respect to any matter considered by him or her to be of public concern, may by order appoint a person to—

(a) inquire into any aspect of administration, operation, practice or procedure of the Garda Síochána, or the conduct of its members, and

(b) make a report to the Minister on the conclusion of the inquiry.

(2) A person who, in the Minister’s opinion, has the experience, qualifications, training or expertise appropriate for the inquiry may be appointed to conduct the inquiry.

(3) The Minister shall specify the terms of reference of the inquiry in the order under subsection (1) and may, by order, made at any time before the submission of the final report, amend those terms for the purpose of clarifying, limiting or extending the scope of the inquiry.

(4) For the purpose of the inquiry, the appointed person—

(a) may require a member of the Garda Síochána, or any other person, who possesses information or possesses or controls a document or thing that is relevant to the inquiry to provide the information, document or thing to the appointed person, and

(b) where appropriate, may require the member or other person to attend before the appointed person for that purpose.

(5) The member or other person shall cooperate with the inquiry and answer fully and truthfully any question put to him or her by the appointed person.

(6) Where the member or other person fails to comply with a requirement under subsection (4), the High Court may, on application by the appointed person and on notice to the member or other person—

(a) order the member or person to comply with the requirement, and

(b) include in the order any other provision it considers necessary to enable the order to have full effect.

(7) If the member or other person fails to comply with such an order, the Court may treat the failure for all purposes as if it were a contempt of the Court.

(8) A failure by the member to comply with a requirement under subsection (4) may be the subject of disciplinary action in accordance with the Disciplinary Regulations.

(9) Any information, document or thing provided by a person in accordance with a requirement under subsection (4) is not admissible in any criminal proceedings against the person, and this shall be explained to the person in ordinary language by the appointed person.

(10) The Minister may publish all or part of any report received under this section.

(11) This section applies even if the matter considered by the Minister to be of public concern arose before the passing of this Act.

(12) The power to order an inquiry under this Act is additional to any power conferred by this or another Act relating to inquiries or investigations.

(13) In this section—

‘appointed person’ means a person appointed under this section to conduct an inquiry;

‘criminal proceedings’ does not include disciplinary proceedings.”.

- (a) in section 11(2), by the substitution of “, Deputy Garda Commissioner or Assistant Garda Commissioner” for “Deputy Garda Commissioner”,
- (b) in section 15, by the addition of the following subsection:
- “(6) A reserve member is a volunteer and does not perform his or her functions as such a member under a contract of employment.”,
- (c) in section 39—
- (i) in subsection (1), by the insertion of “or a designated officer of the Ombudsman Commission” after “rank”, and
- (ii) in subsections (3) and (4), by the insertion of “or designated officer” after “rank”,
- (d) in section 44—
- (i) in subsection (2)(a), by the insertion of “or a member of the civilian staff of the Garda Commissioner of a grade equivalent to that of Deputy Garda Commissioner” after “Deputy Garda Commissioner”, and
- (ii) by the addition of the following subsection:
- “(7) The audit committee may act notwithstanding one or more than one vacancy in its membership, including a vacancy that results in subsection (2) not being complied with.”,
- (e) in section 47(3), by the substitution of the following paragraph for paragraph (a):
- “(a) the period beginning on 1 July 2007 and ending 3 months after that date, and”,
- (f) in section 75(3)(c), by the insertion of “chairperson of the” after “the”,
- (g) in section 79(10), by the insertion of “Commission” after “Ombudsman”,
- (h) in section 82(2), by the substitution of “under the provisions” for “under the provision”,
- (i) in section 94(7), by the substitution of “may have been committed” for “has been committed”,
- (j) in section 98(1), by the deletion of “, in relation to the member of the Garda Síochána under investigation,”,
- (k) in section 99(1), by the deletion of “in the prescribed form”,
- (l) in section 117(6)(b), by the substitution of “with such police service or” for “with any”, and

- (m) in section 122(1)(h), by the insertion of “, including the retirement ages of reserve members and other ranks in the Garda Síochána” after “members”.

PART 8

AMENDMENTS TO THE SEA-FISHERIES ACTS 2003 AND 2006

44.—The Sea-Fisheries and Maritime Jurisdiction Act 2006 is amended—

Amendments to
Sea-Fisheries Acts
2003 and 2006.

- (a) by inserting after section 17 the following new section:

“Search
warrants.

17A.—(1) This section applies to an offence under the *Sea-Fisheries Acts 2003 to 2007*.

(2) A judge of the District Court, by information on oath of a sea-fisheries protection officer, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to the commission of, an offence to which this section applies is to be found in any place, issue a warrant for the search of that place and any persons found there.

(3) A warrant under this section shall be expressed and shall operate to authorise a named sea-fisheries protection officer, alone or accompanied by such other persons as may be necessary—

- (a) to enter (if necessary by the use of reasonable force) and on production of the warrant (if so requested), within 7 days from the date of issuing of the warrant, the place named in the warrant,
- (b) to search it and any persons found there,
- (c) while there, to exercise any of the functions of a sea-fisheries protection officer—
 - (i) under section 17, and
 - (ii) under section 18, if the place is a sea-fishing boat,
- (d) to otherwise examine, take, remove and detain any thing found there, or in the possession of a person present there at the time of the search, which the sea-fisheries protection officer reasonably believes to be evidence of or relating to

the commission of an offence to which this section applies, and

- (e) to take any other steps which may appear to the sea-fisheries protection officer to be necessary for preserving any such thing and preventing interference with it.

(4) The authority conferred by subsection (3)(d) to take, remove and detain any thing includes, in the case of records, authority—

- (a) to make and retain a copy of the records, and
- (b) where necessary, to seize and, for as long as necessary, retain any computer or other storage medium in which any record is kept.

(5) A sea-fisheries protection officer acting under the authority of a warrant under this section may—

- (a) operate any computer at the place which is being searched or cause any such computer to be operated by a person accompanying the officer for that purpose, and
- (b) require any person at that place who appears to the officer to have lawful access to the information in any such computer—
 - (i) to give to the officer any password necessary to operate it,
 - (ii) otherwise to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible, or
 - (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

(6) Where any sea-fisheries protection officer has entered a place in the execution of a warrant issued under this section, he or she may seize and detain any material, other than items subject to legal privilege, which is likely to be of substantial value

(whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(7) The power to issue a warrant under this section—

(a) is without prejudice to the exercise of a function by a sea-fisheries protection officer under any other provision of the *Sea-Fisheries Acts 2003 to 2007*, and

(b) is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.

(8) A sea-fisheries protection officer to whom a warrant under this section has been issued shall, if not in uniform and if requested by a person affected, produce evidence of his or her authority as such an officer.

(9) In this section—

‘commission’, in relation to an offence, includes an attempt to commit the offence;

‘computer at the place which is being searched’ includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of that computer;

‘place’ includes a dwelling, a building or other structure or part of a building or other structure, a vehicle, a sea-fishing boat or other vessel, an aircraft, an installation in the territorial seas or in a designated area (within the meaning of the *Continental Shelf Act 1968*) and a tent, caravan or other temporary or movable structure;

‘thing’ includes any thing that may be inspected by a sea-fisheries protection officer pursuant to section 17 or 18.”,

(b) in section 28—

(i) by substituting for subsection (1) the following:

“(1) A person guilty of an offence committed on board a sea-fishing boat under a provision of—

(a) Chapter 2 specified in column (2) of Table 1, or

(b) the Act of 2003 specified in column (2) of Table 2,

is liable, on conviction on indictment, to the fine specified in column (3) of that Table at the reference number at which that provision is specified in respect of the category of sea-fishing boat mentioned in that column and to the forfeiture specified in subsection (5).

(1A) A person guilty of an offence under section 11, 12, 13, 14 or 15, which is not committed on board a sea-fishing boat, in respect of the buying, handling, weighing, trans-shipping, transporting, landing, processing, storing, documenting or selling of fish is liable, on conviction on indictment, to a fine not exceeding €100,000. Any fish found to which the offence relates used in the commission of the offence are, as a statutory consequence of the conviction, forfeited.”

and

(ii) in subsection (2), by substituting “subsection (1) or (1A)” for “subsection (1)”,

and

(c) in section 29, by inserting “or under section 28(1A)” after “Table”.

PART 9

MISCELLANEOUS

Amendment of
Garda Síochána
(Complaints) Act
1986.

45.—(1) Paragraph 2 of the First Schedule to the Garda Síochána (Complaints) Act 1986 is amended by the insertion of the following subparagraph after subparagraph (3):

“(3A) Notwithstanding subparagraphs (2) and (3), the term of office of a member of the Board ceases on the commencement of Schedule 1 to the Garda Síochána Act 2005 in so far as that Schedule relates to the repeal of this Act.”.

(2) Paragraph 1 of the Third Schedule to that Act is amended by the insertion of the following subparagraph after subparagraph (3):

“(3A) Notwithstanding subparagraphs (2) and (3), the term of office of a member of the Board ceases on the commencement of Schedule 1 to the Garda Síochána Act 2005 in so far as that Schedule relates to the repeal of this Act.”.

Amendment of Act
of 2006.

46.—The Act of 2006 is amended by the substitution of the following sections for section 183:

“Possession of
article
intended for
use in
connection
with certain
offences.

183.—(1) A person is guilty of an offence if he or she possesses or controls any article in circumstances giving rise to a reasonable inference that he or she possesses or controls it for a purpose connected with the commission, preparation, facilitation or instigation of—

- (a) an offence under section 15 of the Non-Fatal Offences against the Person Act 1997,
- (b) a drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994,
- (c) murder,
- (d) murder to which section 3 of the Criminal Justice Act 1990 applies, or
- (e) the common law offence of kidnapping to which section 2 of, and paragraph 4 of the Schedule to, the Criminal Law (Jurisdiction) Act 1976 applies.

(2) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he or she did not possess or control the article concerned for a purpose specified in subsection (1).

(3) Where a person is charged with an offence under this section, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

(4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or both.

(5) In this section—

‘article’ means a substance, document or thing;

‘document’ includes—

- (a) a map, plan, graph, drawing, photograph or record, or
- (b) a reproduction in permanent legible form, by a computer or other means (including enlarging), of information in non-legible form;

‘information in non-legible form’ includes information on microfilm, magnetic tape or disk.

Possession of monies intended for use in connection with certain offences.

183A.—(1) A person is guilty of an offence if he or she possesses or controls monies of a value of not less than €5,000 in circumstances giving rise to a reasonable inference that he or she possesses or controls the assets concerned for a purpose connected with the commission, preparation, facilitation or instigation of—

- (a) an offence under section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001,

- (b) an offence under section 15 of the Non-Fatal Offences against the Person Act 1997,
- (c) a drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994,
- (d) an offence under section 17 of the Criminal Justice (Public Order) Act 1994,
- (e) murder,
- (f) murder to which section 3 of the Criminal Justice Act 1990 applies, or
- (g) the common law offence of kidnapping to which section 2 of, and paragraph 4 of the Schedule to, the Criminal Law (Jurisdiction) Act 1976 applies.

(2) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he or she did not possess or control the assets concerned for a purpose specified in subsection (1).

(3) Where a person is charged with an offence under this section, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

(4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or both.

(5) In this section—

‘monies’ means coins and notes in any currency, bank drafts, postal orders, certificates of deposit and any other similar instruments easily convertible into money.”.

Amendment of section 15 of Criminal Justice (Theft and Fraud Offences) Act 2001.

47.—The Criminal Justice (Theft and Fraud Offences) Act 2001 is amended—

(a) in section 15—

(i) in subsection (1), by the insertion of the following paragraph after paragraph (a):

“(aa) robbery,”

and

(ii) by the substitution of the following subsection for subsection (2):

“(2) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence the article concerned was not in his or her possession for a purpose specified in subsection (1).”.

and

- (b) in section 19(2), by the substitution of “€5,000” for “£1,500”.

48.—The Act of 1984 is amended—

Amendment of Act of 1984.

- (a) in section 6—

- (i) by the insertion of the following subsection after subsection (1):

“(1A) Where photographs or fingerprints and palm prints, taken pursuant to subsection (1), are lost or damaged or are otherwise imperfect, they may be taken on a second or further occasion.”.

and

- (ii) by the substitution of the following subsection for subsection (2):

“(2) The powers conferred by subsections (1)(c), (1)(d) or (1A) shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of inspector.”.

and

- (b) by the insertion of the following section after section 6:

“Use of reasonable force in certain circumstances. 6A.—(1) Without prejudice to the generality of section 6, a member of the Garda Síochána may, where—

- (a) a person is detained under section 4, and

- (b) he or she fails or refuses to allow his or her photograph or fingerprints and palm prints to be taken pursuant to section 6,

use such force as he or she reasonably considers to be necessary to take the photograph or fingerprints and palm prints.

- (2) (a) Such a power shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of superintendent.

- (b) An authorisation pursuant to paragraph (a) may be given orally or in writing and if given

orally shall be confirmed in writing as soon as practicable.

(3) Where a member of the Garda Síochána intends to exercise a power conferred by subsection (1), he or she shall inform the person—

(a) of that intention, and

(b) that an authorisation to do so has been given pursuant to subsection (2)(a).

(4) Photographs or fingerprints and palm prints taken pursuant to this section shall be taken in the presence of a member of the Garda Síochána not below the rank of inspector.

(5) The taking of such photographs and fingerprints and palm prints shall be video-recorded.”

and

(c) in section 15(2), by the substitution of “€5,000” for “€2,500”.

Destruction of records.

49.—The Act of 1984 is amended by the substitution of the following section for section 8:

“8.—(1) Where a person (in this section referred to as ‘the requester’) has had records taken in pursuance of powers conferred by section 6 or 6A of this Act or section 12 of the Act of 2006, and proceedings for an offence to which section 4 applies—

(a) are not instituted against the requester within the period of twelve months from the date of the taking of the records, and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found, or

(b) have been so instituted and—

(i) the requester is acquitted,

(ii) the charge against the requester in respect of the offence concerned is dismissed under section 4E of the Criminal Procedure Act 1967, or

(iii) the proceedings are discontinued,

he or she may request the Commissioner to have the records concerned destroyed or their use limited.

(2) For the purposes of subsection (1)(b)(ii), a charge against the requester in respect of the offence concerned shall be regarded as dismissed when—

- (a) the time for bringing an appeal against the dismissal has expired,
 - (b) any such appeal has been withdrawn or abandoned, or
 - (c) on any such appeal, the dismissal is upheld.
- (3) Such a request shall be made in writing to the Commissioner and shall—
 - (a) contain sufficient particulars in relation to the request to enable the records to be identified, and
 - (b) set out the reasons for the request.
- (4) The Commissioner shall, as soon as may be, acknowledge receipt of the request in writing.
- (5) The Commissioner shall, as soon as may be but not later than 4 weeks after receipt of the request, decide whether to grant or refuse to grant the request or whether to grant it in part and shall cause the requester to be notified in writing of the decision and the date on which it was made.
- (6) Where the Commissioner decides to refuse the request or grant it only in part, the requester may within 8 weeks beginning on the date of the decision, appeal to the District Court against the decision.
- (7) An appeal under subsection (6) shall—
 - (a) be on notice to the other party to the proceedings,
 - (b) set out reasons for the appeal, and
 - (c) be heard otherwise than in public.
- (8) On appeal, the court may have regard in particular to—
 - (a) the results of analysis (if any) of the records concerned,
 - (b) any previous convictions of the requester, and
 - (c) whether, in all the circumstances, it would be unjust not to allow the appeal.
- (9) The court may make such order as it sees fit on the appeal, including an order—
 - (a) for the destruction of the records, or
 - (b) an order authorising their retention for such purpose or period as it may direct.
- (10) An appeal from a refusal or grant of an order of destruction of the District Court shall lie to a judge of the Circuit Court at the instance of the requester or the Commissioner, and the appeal shall be heard otherwise than in public.
- (11) Where an order for the destruction of any records is made under this section, the Commissioner shall cause the

requester to be notified in writing as soon as the records have been destroyed.

(12) The jurisdiction conferred on the District Court under this section shall be exercised by the judge of that Court assigned to the district court district where the requester resides.

(13) Nothing in this section shall—

- (a) prevent or restrict the exercise of powers conferred by section 6 or 6A of this Act or section 12 of the Act of 2006, or
- (b) pending the conclusion of proceedings under this section, prevent or restrict use of the records for the purpose of other proceedings or of a criminal investigation.

(14) This section does not apply to records taken in pursuance of powers conferred by section 6 of this Act or section 12 of the Act of 2006 before the commencement of this section.

(15) In this section—

‘Act of 2006’ means Criminal Justice Act 2006;

‘Commissioner’ means the Commissioner of the Garda Síochána;

‘records’ means a photograph (including a negative), fingerprints and palm prints taken in pursuance of the powers conferred by section 6 or 6A of this Act or section 12 of the Act of 2006 and every copy and related record thereof.”

Powers of detention for specified offences.

50.—(1) This section applies to—

- (a) murder involving the use of a firearm or an explosive,
- (b) murder to which section 3 of the Criminal Justice Act 1990 applies,
- (c) an offence under section 15 of the Act of 1925, or
- (d) an offence under section 15 of the Non-Fatal Offences against the Person Act 1997 involving the use of a firearm.

(2) Where a member of the Garda Síochána arrests without warrant, whether in a Garda Síochána station or elsewhere, a person (in this section referred to as “the arrested person”) whom he or she, with reasonable cause, suspects of having committed an offence to which this section applies, the arrested person—

- (a) if not already in a Garda Síochána station, may be taken to and detained in a Garda Síochána station, or
- (b) if he or she is arrested in a Garda Síochána station, may be detained in the station,

for such a period or periods authorised by *subsection (3)* if the member of the Garda Síochána in charge of the station concerned

has at the time of the arrested person's arrival at the station or his or her arrest in the station, as may be appropriate, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.

- (3) (a) The period for which a person may be detained pursuant to *subsection (2)* shall, subject to the provisions of this subsection, not exceed 6 hours from the time of his or her arrest.
- (b) A member of the Garda Síochána not below the rank of superintendent may direct that a person detained pursuant to *subsection (2)* 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) A member 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 detention is necessary for the proper investigation of the offence concerned.
- (d) A direction pursuant to *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 pursuant to *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 member 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 member of the Garda Síochána giving it and—
- (i) shall state the date and time when it was given, the member's name and rank and that he or she 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 (S.I. No. 119 of 1987)) in respect of the person concerned.
- (g) (i) A member of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or 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 pursuant to *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) A member of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or 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 pursuant to *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.

(4) On an application pursuant to *subsection (3)* 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 member of the Garda Síochána making the application.

(5) When issuing a warrant pursuant to *subsection (3)* the judge concerned may order that the person concerned be brought before a judge of the Circuit Court or 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.

(6) 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 (7)*, 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.

(7) 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 an offence to which this section applies, other than the offence to which the detention relates and the member of the Garda Síochána then in charge of the Garda Síochána station 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.

(8) 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 subsection (8) or (8A) of section 4 of the Act of 1984 (as applied by *section 52*) in reckoning a period of detention.

(9) Notwithstanding *subsections (3) and (8)*, if—

- (a) an application is made under *subsection (3)* for a warrant authorising the detention for a further period of a person detained under that subsection, and
- (b) the period of detention pursuant to that subsection has not expired at the commencement of the hearing of the application but would, but for this paragraph, expire during the hearing,

it shall be deemed not to expire until the determination of the application.

(10) Nothing in this section shall affect the operation of section 30 of the Offences Against the State Act 1939, section 4 of the Act of 1984 or section 2 of the Criminal Justice (Drug Trafficking) Act 1996.

51.—(1) Where a person is detained pursuant to *section 50* 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 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 District Court on arrest or at any specified time or times during the period of detention authorised by *section 50* 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 50* 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:

- (a) in *subsection (3)*, the substitution for *paragraphs (c) and (d)* of the following paragraphs:

“(c) A member of the Garda Síochána not below the rank of chief superintendent may apply to a judge of the Circuit Court or District Court for

a warrant authorising the detention of a person detained pursuant to a direction 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) in *paragraph (g)(i)* of *subsection (3)*, the substitution of “under a warrant issued pursuant to *paragraph (d)*” for “pursuant to a direction under *paragraph (c)*”.

(4) A person arrested in connection with an offence other than one to which *section 50* 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 Offences Against the State Act 1939 or detained under section 4 of the Act of 1984 or section 2 of the Criminal Justice (Drug Trafficking) Act 1996 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 50*—

- (a) in connection with the first-mentioned offence, or
- (b) in connection with an offence to which *section 50* relates and 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.

52.—Sections 4(4), 4(7), 4(8), 4(8A), 4(11), 5, 6(1) to (4), 6A, 8, 18, 19 and 19A of the Act of 1984 shall apply with any necessary modifications in relation to persons detained under *section 50* as they apply to persons detained under section 4 of that Act.

Amendment of Criminal Justice (Forensic Evidence) Act 1990.

53.—The Criminal Justice (Forensic Evidence) Act 1990 is amended—

- (a) in section 2—
- (i) in subsection (1), by the substitution of “section 2 of the Criminal Justice (Drug Trafficking) Act 1996 or

section 50 of the Criminal Justice Act 2007,” for “or section 2 of the Criminal Justice (Drug Trafficking) Act, 1996,”

(ii) in subsection (3), by the insertion in paragraph (b) after “section 3(1) of the Criminal Justice Act, 1994” of “or an offence to which *section 50 of the Criminal Justice Act 2007* applies”, and

(iii) in subsection (5), by the insertion in paragraph (a)(ii) after “within the meaning of 3(1) of the Criminal Justice Act 1994” of “or an offence to which *section 50 of the Criminal Justice Act 2007* applies”, and

(b) in section 4(2), by the substitution of “section 2 of the Criminal Justice (Drug Trafficking) Act 1996 or *section 50 of the Criminal Justice Act 2007,*” for “or section 2 of the Criminal Justice (Drug Trafficking) Act, 1996,”.

54.—Section 5 of the Criminal Justice (Drug Trafficking) Act 1996 is amended by—

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

(a) the insertion of “4(8A),” after “4(8),” and

(b) the substitution of “, 6A, 8, 18, 19 and 19A” for “and 8”.

55.—Section 9 of the Act of 1984 is amended by—

Amendment of section 9 of Act of 1984.

(a) the insertion of “4(8A),” after “4(8),” and

(b) the substitution of “, 6(3), 6A, 18, 19 and 19A” for “and 6(3)”.

56.—(1) Where a person is before a court charged with an offence, a copy of any recording of the questioning of the person by a member of the Garda Síochána while he or she was detained in a Garda Síochána station, or such questioning elsewhere, in connection with the investigation of the offence shall be given to the person or his or her legal representative only if the court so directs and subject to such conditions (if any) as the court may specify.

Copy of recording of questioning by Garda Síochána to be given to accused.

(2) A recording referred to in *subsection (1)* of the questioning of a person shall not be given to the person by the Garda Síochána except in accordance with a direction or order of a court made under that subsection or otherwise and Regulation 16 of the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 (S.I. No. 74 of 1997) is hereby revoked.

(3) In this section—

“recording” means a recording on tape of—

(a) an oral communication, statement or utterance, or

(b) a series of visual images which, when reproduced on tape, appear as a moving picture,

or both;

“tape” includes—

- (a) a disc, magnetic tape, soundtrack or other device in which sounds or signals may be embodied for the purpose of being reproduced (with or without the aid of some other instrument) in audible form, and
- (b) a film, disc, magnetic tape or other device in which visual images may be embodied for the purpose of being reproduced (with or without the aid of some other instrument) in visual form.

Admission in evidence of recording of questioning of accused by Garda Síochána.

57.—(1) A court may admit in evidence at the trial of a person in respect of an offence—

- (a) a recording by electronic or similar means, or
- (b) a transcript of such a recording,

or both of the questioning of the person by a member of the Garda Síochána at a Garda Síochána station or elsewhere in connection with the investigation of the offence.

(2) Any statement made by the person concerned that is recorded in a recording which is admitted in evidence under *subsection (1)* may be admissible in evidence at the trial concerned notwithstanding the fact that—

- (a) it was not taken down in writing at the time it was made, or
- (b) that statement is not in writing and signed by the person who made it,

or both.

(3) This section shall not affect the admissibility in evidence at the trial of a person in respect of an offence of any statement that is recorded in writing made by the person during questioning by a member of the Garda Síochána at a Garda Síochána station or elsewhere in connection with the investigation of the offence (whether or not that statement is signed by the person) and irrespective of whether the making of that statement is recorded by electronic or similar means.

Amendment of section 8 of Criminal Assets Bureau Act 1996.

58.—Section 8 of the Criminal Assets Bureau Act 1996 is amended—

- (a) in subsection (2), by the substitution of “subject to subsections (5), (6), (6A), (6B), (6C) and (7)” for “subject to subsections (5), (6) and (7)”, and
- (b) by the insertion of the following subsections after subsection (6):

“(6A) Without prejudice to the generality of subsection (6), a bureau officer who is an officer of the Revenue Commissioners or an officer of the Minister for Social and Family Affairs may, if and for so long as he or she is accompanied by a bureau officer who is a member of the Garda Síochána, attend at, and participate in, the questioning of a person detained pursuant to—

- (a) section 4 of the Criminal Justice Act 1984, or

- (b) section 2 of the Criminal Justice (Drug Trafficking) Act 1996 (including that section as applied by section 4 of that Act),

in connection with the investigation of an offence but only if the second-mentioned bureau officer requests the first-mentioned bureau officer to do so and the second-mentioned bureau officer is satisfied that the attendance at, and participation in, such questioning of the first-mentioned bureau officer is necessary for the proper investigation of the offence concerned.

(6B) A bureau officer who attends at, and participates in, the questioning of a person in accordance with subsection (6A) 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 Criminal Justice Act 1984.

(6C) An act committed or omission made by a bureau officer who attends at, and participates in, the questioning of a person in accordance with subsection (6A) 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 bureau 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.”.

59.—Section 29 of the Courts of Justice Act 1924 is amended—

Amendment of section 29 of Courts of Justice Act 1924.

- (a) in subsection (1), by the substitution of “Subject to subsection (9A) of this section, no appeal shall lie” for “No appeal shall lie”,
- (b) by the insertion of the following subsection after subsection (5):

“(5A) The Supreme Court, in an appeal under subsection (2) or (3) of this section, may, if it considers it appropriate to do so, hear argument and make a determination in relation to any part (not only the point of law of exceptional public importance which is the subject of the certificate concerned issued under whichever of those subsections is appropriate) of the decision of the Court of Criminal Appeal concerned.”,

and

- (c) by the insertion of the following subsection after subsection (9):

“(9A) This section shall not affect the operation of section 3 of the Criminal Justice Act 1993.”.

60.—Section 99 of the Act of 2006 is amended—

Amendment of section 99 of Act of 2006.

- (a) in subsection (9), by the substitution of “the court before which proceedings for the offence are brought shall, before imposing sentence for that offence” for “the court

before which proceedings for the offence were brought shall, after imposing sentence for that offence”,

(b) in subsection (10), by the substitution of “other than a period spent in custody by the person in respect of an offence referred to in subsection (9)” for “other than a period during which the person was serving a sentence of imprisonment in respect of an offence referred to in subsection (9)”,

(c) by the insertion of the following subsection after subsection (10):

“(10A) The court referred to in subsection (10) shall remand the person concerned in custody or on bail to the next sitting of the court referred to in subsection (9) for the purpose of that court imposing sentence on that person for the offence referred to in that subsection.”,

(d) in subsection (11), by the substitution of the following paragraph for paragraph (a):

“(a) Where an order under subsection (1) is revoked under subsection (10), a sentence of imprisonment (other than a sentence consisting of imprisonment for life) imposed on the person concerned under subsection (10A) shall not commence until the expiration of any period of imprisonment required to be served by the person under subsection (10).”,

and

(e) by the addition of the following subsection:

“(20) Where a court imposes a sentence of a term of imprisonment that is to run consecutively to a sentence of a term of imprisonment the operation of a part of which is suspended, the first-mentioned sentence shall commence at the expiration of the part of the second-mentioned sentence the operation of which is not suspended.”.

Section 3.

SCHEDULE 1

ENACTMENTS REPEALED

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 29 of 1996	Criminal Justice (Drug Trafficking) Act 1996	Section 7.
No. 39 of 1998	Offences Against the State (Amendment) Act 1998	Section 5.

SCHEDULE 2

Sections 25 and 26.

OFFENCES FOR THE PURPOSES OF PART 3

Common Law Offences

1. Murder.

Non-fatal offences against the person

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

- (a) section 4 (causing serious harm);
- (b) section 5 (threats to kill or cause serious harm);
- (c) section 15 (false imprisonment).

Explosives offences

3. An offence under any of the following provisions of the Explosive Substances Act 1883:

- (a) section 2 (causing explosion likely to endanger life or damage property);
- (b) section 3 (possession, etc., of explosive substances);
- (c) section 4 (making or possessing explosives in suspicious circumstances).

Firearms offences

4. An offence under section 15 (possession of firearm with intent to endanger life) of the Act of 1925.

5. An offence under any of the following provisions of the Act of 1964:

- (a) section 26 (possession of firearms while taking vehicle without authority);
- (b) section 27 (prohibition of use of firearms to assist or aid escape);
- (c) section 27A (possession of firearm or ammunition in suspicious circumstances);
- (d) section 27B (carrying firearm with criminal intent).

6. An offence under section 12A (shortening barrel of shotgun or rifle) of the Act of 1990.

Aggravated burglary

7. An offence under section 13 (aggravated burglary) of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Drug trafficking offences

8. A drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994.

Organised crime

9. An offence under any of the following provisions of the Act of 2006:

- (a) section 71 (offence of conspiracy);
- (b) section 72 (organised crime);
- (c) section 73 (commission of offence for criminal organisation).

Blackmail, extortion and demanding money with menaces

10. An offence under section 17 (blackmail, extortion and demanding money with menaces) of the Criminal Justice (Public Order) Act 1994.



CRIMINAL JUSTICE ACT 2007

EXPLANATORY MEMORANDUM

PART 1

PRELIMINARY AND GENERAL

Part 1 defines certain terms used in the Act and includes standard provisions in relation to the bringing into force of the Act and expenses. It also updates certain collective citations.

Short title, collective citation, construction and commencement

Section 1 is a standard provision providing for the short title, commencement orders and collective citations.

Definitions

Section 2 is a standard provision which defines certain words and terms used in the Act.

Repeals

Section 3 provides for the repeals as set out in Schedule 1 (with the necessary saving provision) consequential on subsequent sections.

Expenses

Section 4 is a standard provision providing for the payment of expenses incurred in the administration of the Act out of moneys provided by the Oireachtas.

PART 2

AMENDMENT OF ENACTMENTS RELATING TO BAIL

Part 2 amends the law relating to bail including the Criminal Procedure Act 1967, the Criminal Justice Act 1984 and the Bail Act 1997. It provides amongst other matters for: additional information to be made available to the court to improve the quality of decision-making in certain bail cases; for opinion evidence of a member of the Garda Síochána of chief superintendent rank or higher to be admissible as evidence in certain cases; for improvements to the administration of bail; the court to have the option to impose electronic monitoring as a condition of bail in certain cases; additional conditions to be imposed on bail when a person is appealing a sentence of imprisonment from the District Court to the Circuit Court and for the prosecution to have a right to appeal a decision of the District Court in respect of bail.

Amendment of section 1 of Act of 1997

Section 5 amends section 1 of the Bail Act 1997 which provides the necessary definitions for the 1997 Act. It provides for the additional definitions of “authorised person”, “Minister” and “prescribed”. These are necessitated by the amendments to the 1997 Act in subsequent sections of this Act.

Statement by applicants for bail charged with serious offences

Section 6 provides for a person who is charged with a serious offence as specified in the Schedule to the Bail Act 1997 to provide a signed written statement as part of his or her application for bail. The information to be contained in the statement concerns his or her occupations, sources of income, property, criminal record including any offences committed while on bail previously and any previous applications for bail. The requirement for the statement can be dispensed with in certain circumstances. It is an offence to knowingly provide false or misleading information. To avoid prejudice to the applicant’s right to a fair trial the court may prohibit publication of information relating to the statement. Publication in breach of such a prohibition is a criminal offence.

Evidence in applications for bail under section 2

Section 7 provides that the opinion of a member of the Garda Síochána not below the rank of chief superintendent that refusal of bail is reasonably necessary to prevent the commission of a serious offence by the applicant for bail is admissible as evidence before a court hearing an application for bail by a person charged with a serious offence (as defined in the Schedule to the Bail Act 1997). To avoid prejudice to the applicant’s right to a fair trial the court may prohibit publication of information relating to the opinion evidence. Publication in breach of such a prohibition is a criminal offence.

Amendment of section 5 of Act of 1997

Section 8 amends section 5 of the Bail Act 1997. The amendments are consequential on amendments to section 22 of the Criminal Procedure Act 1967 (see section 18). The purpose of the amendments is to provide for recognisances which need not include monetary conditions.

Amendment of section 6 of Act of 1997

Section 9 amends section 6 of the Bail Act 1997. The purpose of the amendment is to remove the requirement that the applicant be of good behaviour as a condition of a recognisance. The requirement that the applicant not commit an offence while on bail remains. In addition, the section provides that a recognisance include notification to the applicant of the possibility of seeking a variation of a condition of the recognisance.

Application of section 6 in relation to certain appellants

Section 10 inserts a new section 6A in the Bail Act 1997. The purpose is to allow the court, when admitting a person who is appealing a sentence of imprisonment imposed by the District Court to bail, to make the recognisance subject to a wider range of conditions than is available at present. In addition to the conditions that must be imposed i.e. that the appellant prosecute the appeal, attend court as required and not commit an offence while on bail, the court may choose from the conditions set out in section 6(1)(b) of the 1997 Act.

Electronic monitoring of certain persons admitted to bail

Section 11 inserts a new section 6B in the Bail Act 1997. It allows the court to make a recognisance subject to the condition that the person be monitored electronically. This possibility will be available to the court where: (i) a person charged with a serious offence is to

be admitted to bail or a person is appealing a sentence of imprisonment imposed by the District Court; and (ii) the court considers that it is appropriate to impose conditions that the person reside or remain in a particular district or place in the state or that the person refrain from attending at certain premises or other places. Where a recognisance is made subject to a condition as to electronic monitoring an “authorised person” will be responsible for monitoring compliance.

Evidence of electronic monitoring

Section 12 inserts a new section 6C in the Bail Act 1997. New section 6C is a standard provision concerning the admissibility of documentary evidence in proceedings relating to a breach of an electronic monitoring condition.

Arrangements for electronic monitoring

Section 13 inserts a new section 6D in the Bail Act 1997. New Section 6D allows the Minister, with the consent of the Minister for Finance, to enter into such arrangements including contractual arrangements, as he or she considers appropriate for the operation of electronic monitoring.

Amendment of section 8 of Act of 1997

Section 14 amends section 8 of the Bail Act 1997. These amendments are consequential on the amendments to section 22 of the Criminal Procedure Act 1967 (see section 18) which provide that recognisances do not need to contain monetary conditions.

Estreatment of recognisance and forfeiture of moneys paid into court

Section 15 substitutes section 9 of the Bail Act 1997. The main purpose of this substitution is to provide that estreatment of recognisances is at the discretion of the court. In addition, the substituted text expands the options available to the court where a condition of a recognisance is breached by allowing, *inter alia*, for the appointment of a receiver. The substitution also provides for a warrant of committal to issue where a court order as to estreatment or forfeiture etc is not complied with rather than the current enforcement procedure of distress warrants which authorise the Gardaí to seize goods etc.

Regulations

Section 16 inserts a new section 11A in the Bail Act 1997. This is a standard provision empowering the Minister to make regulations prescribing any matter or thing which is referred to in the Bail Act or for the purpose of enabling any provision of the Bail Act to have full effect.

Amendment of Schedule to Act of 1997

Section 17 makes a number of amendments to the Schedule to the Bail Act 1997. The Schedule lists the offences that are to be regarded as “serious offences” for the purposes of the Bail Act. The amendments update the Schedule having regard to amendments to the Firearms Acts 1925 to 2006 introduced by means of the Criminal Justice Act 2006.

Amendment of section 22 of Act of 1967

Section 18 amends section 22 of the Criminal Procedure Act 1967. The purpose of this amendment is to provide that recognisances need not contain a condition as to the payment of moneys into court — it becomes a matter for the court to determine having regard to the circumstances of the case, including the means of the person and the nature of the offence in relation to which the person is in custody.

Amendment of section 28 of Act of 1967

Section 19 amends section 28 of the Criminal Procedure Act 1967 in order to provide that the prosecution may appeal to the High Court against a decision in relation to bail. At present only the applicant may appeal. In addition, the amendment provides that the High Court may transfer its appeal function in certain circumstances to the Circuit Court (i.e. when the case is triable by the Circuit Court) where the appellant has been remanded in custody by the District Court.

Amendment of section 31 of Act of 1967

Section 20 amends section 31 of the Criminal Procedure Act 1967. The purpose of the amendment is to provide that release on bail in certain cases by a member of the Garda Síochána does not need to be conditioned on payment of moneys.

Amendment of section 68 of Children Act 2001

Section 21 amends section 68 of the Children Act 2001. The purpose of the amendment is to provide that release on bail in certain cases by a member of the Garda Síochána does not need to be conditioned on payment of moneys.

Amendment of section 11(1) of Act of 1984

Section 22 amends section 11 of the Criminal Justice Act 1984. Section 11 provides that a sentence for an offence committed while a person is on bail should be consecutive on the sentence for the original offence. The purpose of the amendment is to address an anomaly whereby an offence committed by a person who is unlawfully at large following the revocation of bail does not at present attract the consecutive sentence requirement. The amendment addresses this point.

Amendment of section 13 of Act of 1984

Section 23 amends section 13 of the Criminal Justice Act 1984 in two respects. Section 13 creates the offence of failure to surrender bail. The section is amended in order to increase the maximum fine that may be imposed from £1,000 to €5,000. This is a summary offence and as such must be prosecuted within 6 months. The purpose of the second amendment proposed is to disapply section 10(4) of the Petty Sessions (Ireland) Act 1851 and provide instead that prosecutions may be taken within 12 months.

PART 3

SENTENCING

Part 3 provides for new sentencing arrangements for certain categories of offences, in particular those offences that are considered to be linked to organised crime; introduces post-release orders to be known as “monitoring orders” and “protection of persons orders”; and amends the Criminal Justice (Legal Aid) Act 1962.

Interpretation (Part 3)

Section 24 provides for how the terms “imprisonment”, “prison”, “sentence of imprisonment” and “remission from the sentence” are to be construed for the purposes of Part 3. It also provides that references to offences specified in Schedule 2 to the Act shall include references to participation as accomplices and references to inchoate offences (attempts, etc.)

Commission of another offence within specified period

Section 25 introduces new sentencing requirements where a person who has been convicted on indictment of an offence in Schedule 2 and, within 7 years of the first conviction, commits another offence in Schedule 2. In such cases the court must impose a sentence for the subsequent offence that is at least three quarters of the maximum sentence stipulated under the law for that offence unless to do so would be disproportionate in all the circumstances of the case. In order for this section to apply a number of criteria must be met:

- the person must be 18 years or more;
- the conviction for which the person is being sentenced must be a conviction on indictment for an offence specified in Schedule 2 to the Act;
- the person must previously have been convicted on indictment of one of the offences specified in the Schedule and been sentenced to 5 years or more imprisonment; and
- the offence for which the person is being sentenced must have been committed within 7 years from the date of conviction for the previous offence (excluding any period of imprisonment) or committed during the period of imprisonment for the first offence.

Where the maximum sentence is life imprisonment the court must specify a sentence of at least 10 years imprisonment.

Monitoring orders and protection of persons orders

Section 26 provides for two new types of post-release orders: a “monitoring order” and a “protection of persons order”. The court may make a “monitoring order” requiring the offender to notify in writing the inspector of the Garda Síochána of the district in which the offender’s home is located, of the offender’s address, change of address, or any proposed absence for a period of more than 7 days from his or her home. The court may make a “protection of persons order” in relation to the offender for the purpose of protecting the victim of the offence concerned or any other person named in the order from harassment or intimidation by the offender while the order is in force. Both orders are activated on the release of the offender from prison. The orders may last for a period not exceeding 7 years. Provision is made for the variation or revocation of the order.

Amendment of Criminal Justice (Legal Aid) Act 1962

Section 27 amends the Criminal Justice (Legal Aid) Act 1962 in order to extend its provisions to include applications to vary or revoke an order imposed under section 26.

PART 4

INFERENCES TO BE DRAWN IN CERTAIN CIRCUMSTANCES

Part 4 amends existing provisions relating to the drawing of inferences from a failure or refusal to account for circumstances which clearly call for same in order to improve their operation; expands the circumstances in which inferences may be drawn in proceedings from a failure to mention particular facts; and provides for the making of Ministerial regulations in relation to the administration of cautions by members of the Garda Síochána to detained persons. A range of safeguards are provided.

Inferences from failure or refusal to account for objects, marks, etc.

Section 28 substitutes section 18 of the Criminal Justice Act 1984. Section 18 currently provides for the drawing of inferences in proceedings for an arrestable offence from the failure or refusal of an accused to account for objects, marks etc when requested to account for same on being questioned or charged by the arresting member of the Garda Síochána. The purpose of the substituted text is to improve the operation of the section (i.e. henceforth, the question may be put to the suspect by any garda not just the arresting member) and also to explicitly provide for certain safeguards. For example, it will not be possible to convict on an inference alone, without corroboration or to draw an inference unless the accused was cautioned in clear language and was afforded a reasonable opportunity to consult a solicitor before such failure or refusal occurred. Furthermore the provision will not apply in relation to questioning in Garda custody unless the interview is recorded or the person consents in writing to it not being recorded.

Inferences from failure or refusal to account for accused's presence at a particular place

Section 29 substitutes section 19 of the Criminal Justice Act 1984. Section 19 currently provides for the drawing of inferences in proceedings for an arrestable offence from the failure or refusal of an accused to account for his or her presence at a particular place when requested to account for same on being questioned or charged by the arresting member of the Garda Síochána. As with section 28 the purpose of the substituted text is to improve the operation of the section and also to explicitly provide for certain safeguards.

Inferences from failure of accused to mention particular facts

Section 30 inserts a new section 19A in the Criminal Justice Act 1984. The purpose of the new section is to provide for the circumstances in which inferences may be drawn in any subsequent proceedings from a failure by an accused to mention particular facts when questioned by Gardaí or when being charged with an arrestable offence.

The safeguards included in sections 18 and 19 of the 1984 Act are replicated in this section.

Given that this new section deals with all arrestable offences, sections 5 of the Offences Against the State (Amendment) Act 1998 and section 7 of the Criminal Justice (Drug Trafficking) Act 1996 are to be repealed, since those sections deal only with particular offences — see section 3 and Schedule 1 to the Act.

Amendment of section 2 of Offences Against the State (Amendment) Act 1998

Section 31 amends section 2 of the Offences against the State (Amendment) Act 1998 in order to align its inference drawing provision with amended sections 18 and 19 and new section 19A of the 1984 Act.

Regulations

Section 32 provides for the making of Ministerial regulations in relation to the administration of cautions by members of the Garda Síochána to detained persons. The regulations may include provision for the forms of caution to be administered to a person in different circumstances and in different classes of cases, and the procedures that are to apply where a caution has to be withdrawn and a different caution administered.

PART 5

MISUSE OF DRUGS

Amendment of section 27 of Misuse of Drugs Act 1977

Section 33 substitutes subsections (3A) to (3K) of section 27 of the Misuse of Drugs Act 1977, as amended by the Criminal Justice Acts of 1999 and 2006. Section 27 as amended provides, *inter alia*, for the 10 years mandatory minimum sentencing arrangements for certain drug trafficking offences. The purpose of this substitution is twofold: (i) to represent the amended subsections together and remove the somewhat opaque subsections (3CC), (3CCC) etc arising from previous amendments, and (ii) by means of subsection (3D)(a) to include what may be seen as a “construction clause” in order to set out clearly the purpose of the mandatory minimum sentencing arrangements in section 27. It is intended that the mandatory minimum sentence should be imposed in all but the most exceptional cases and that reductions in the minimum sentence should be exceptional and confined to cases where particular / specific circumstances apply.

PART 6

AMENDMENT OF FIREARMS ACTS 1925 TO 2006

Amendment of section 2 of the Firearms Act 1925

Section 34 provides for amendments to section 2 (restrictions on possession, use and carriage of firearms) of the Firearms Act 1925. It provides specifically for a superintendent to authorise employees and agents of airport authorities, in the course of their duties, to carry and use firearms for bird control purposes without having to acquire a firearms certificate. In addition, the amendment provides for a superintendent to authorise the National Museum to accept and hold firearms of historical significance without having to obtain a firearms certificate.

Amendment of section 15 of Act of 1925

Section 35 amends section 15 of the Firearms Act 1925 as amended by section 42 of the Criminal Justice Act 2006. What may be seen as a “construction clause” is inserted by means of a new subsection (4A). The aim of this clause is to set out clearly the purpose of the 10 year mandatory minimum sentencing provisions. It is intended that the mandatory sentence should be imposed in all but the most exceptional cases and that reductions in the minimum sentence should be exceptional and confined to cases where particular / specific circumstances apply.

Amendment of section 26 of Act of 1964

Section 36 amends section 26 of the Firearms Act 1964 as amended by section 57 of the Criminal Justice Act 2006. A “construction clause” is inserted by means of a new subsection (4A). The aim of this clause is to set out clearly the purpose of the 5 year mandatory minimum sentencing provisions.

Amendment of section 27 of Act of 1964

Section 37 amends Section 27 of the Firearms Act 1964 as amended by section 58 of the Criminal Justice Act 2006. A “construction clause” is inserted by means of a new subsection (4A). The aim of this clause is to set out clearly the purpose of the 10 year mandatory minimum sentencing provisions.

Amendment of section 27A of Act of 1964

Section 38 provides for the amendment of section 27A (possession of firearms or ammunition in suspicious circumstances) of the Firearms Act 1964 as amended by section 59 of the Criminal Justice Act 2006. It specifically provides for the extension of the offence in section 27A to the possession of ammunition in suspicious circumstances.

In addition a “construction clause” is inserted by means of a new subsection (4A). The aim of this clause is to set out clearly the purpose of the 5 year mandatory minimum sentencing provisions.

Amendment of section 27B of Act of 1964

Section 39 amends section 27B of the Firearms Act 1964 as amended by section 60 of the Criminal Justice Act 2006. A “construction clause” is inserted by means of a new subsection (4A). The aim of this clause is to set out clearly the purpose of the 5 year mandatory minimum sentencing provisions.

Amendment of section 12A of Act of 1990

Section 40 provides for the amendment of section 12A (shortening the barrel of shot-gun or rifle) of the Firearms and Offensive Weapons Act 1990. It specifically provides for the inclusion of section 27 (prohibition of use of firearms to assist or aid escape) of the Firearms Act 1964 in the list of first offences for which a court must impose the prescribed mandatory minimum sentence on persons convicted of a second or subsequent offence of shortening the barrel of a shot-gun or rifle. A “construction clause” is inserted by means of a new subsection (9A). The aim of this clause is to set out clearly the purpose of the 5 year mandatory minimum sentencing provisions.

PART 7

AMENDMENT OF GARDA SÍOCHÁNA ACT 2005

Establishment and functions of Garda Síochána Executive Management Board

Section 41 provides for the insertion into the Garda Síochána Act 2005 of a new Chapter 3A which provides for the establishment and functions of the Garda Síochána Executive Management Board. The Board will consist of executive members and three non-executive members. The executive members will be comprised of the Garda Commissioner, who will be the chairperson of the Board, the Deputy Garda Commissioners and a member of the civilian staff of the Garda Síochána, at a grade equivalent to that of a Deputy Garda Commissioner.

The three non-executive members will be appointed by the Government on the nomination of the Minister. They will be persons with expertise in the strategic and financial management of organisations, the management of their human resources or the planning and review functions relating to them, or persons with other relevant experience. The non-executive members will serve in an advisory capacity only, providing advice in relation to annual policing plans, budgetary matters, allocation of resources, technology and equipment, setting of targets, training, development and leadership and other related matters.

The function of the Board will be to keep under review the performance by the Garda Síochána of its functions and the arrangements and strategies in place to support and enhance the performance of those functions. In particular, the Board will keep under

review, *inter alia*, the arrangements and strategies in place to support and improve the performance of the organisation and the corporate governance arrangements and structures within the Garda Síochána.

Special inquiries relating to Garda Síochána

Section 42 provides for the replacement of section 42 of the 2005 Act with a completely new section with a view to strengthening and making the section more effective. This will be achieved by providing for inquiries under the current section 42, which are limited to the administration, practice or procedure of the Garda Síochána, to be extended to include operations of the force and the conduct of its members. The section is also being strengthened by the inclusion of provisions allowing the person appointed by the Minister to make an application to the High Court and for contempt of court proceedings, in circumstances where a member of the Garda Síochána or any other person fails to cooperate with the inquiry.

Other amendments to Garda Síochána Act 2005

Section 43 provides for a number of amendments to the Garda Síochána Act 2005. Some of these amendments arise from suggestions for amendment made by the Garda Síochána Ombudsman Commission since it took office. The remainder are mainly technical in nature in that they involve minor changes to clarify certain matters which have come to light since the passing of the Act.

PART 8

AMENDMENTS TO THE SEA-FISHERIES ACTS 2003 AND 2006

Amendments to Sea-Fisheries Acts 2003 and 2006

Section 44 deals with amendments to the Sea-Fisheries Acts 2003 and 2006.

Subsection (a) is a provision regarding Section 17 of the Act of 2006 and will allow a Sea-Fisheries Protection Officer to apply to a judge of the District Court for a search warrant to enter and search places where there are reasonable grounds for suspecting that evidence of an offence to which section 17 and 18 applies is to be found.

Subsection (b) is an additional provision in Section 28 of the Act of 2006 which establishes penalty provisions for indictable sea-fishery offences committed somewhere other than on board a sea-fishing boat.

PART 9

Miscellaneous

Amendment of Garda Síochána (Complaints) Act 1986

Section 45 provides for amendments to the First and Third Schedules to the Garda Síochána (Complaints) Act 1986 to provide for the terms of office of the Garda Síochána Complaints Board and the Appeals Board respectively to cease upon the repeal of the 1986 Act. The 1986 Act provides for the members of the Complaints Board and the Appeals Board to be appointed for a five year term. These amendments are necessary to terminate the respective terms of office at an earlier time, when the provisions of the 1986 Act are repealed under the 2005 Act.

Possession of article intended for use in connection with certain offences

Section 46 substitutes a new section for section 183 (Possession of article intended for use in connection with certain offences) and inserts a new section 183A in the Criminal Justice Act 2006. The substituted section 183 provides that a person is guilty of an offence if he or she possesses or controls any article, as defined, in circumstances giving rise to the reasonable inference that he or she possesses or controls the article concerned for the purposes of the commission, preparation, facilitation or instigation of specified offences.

Section 183A provides that it shall be an offence for a person to be in possession of or in control of monies, as defined, with a minimum value of €5,000 in circumstances giving rise to a reasonable inference that he or she possesses or controls the assets concerned for the purposes of the commission, preparation, facilitation or instigation of specified offences.

Amendment of section 15 of the Criminal Justice (Theft and Fraud Offences) Act 2001

Section 47 inserts a new paragraph (aa) in subsection (1) of section 15 of the Criminal Justice (Theft and Fraud Offences) Act 2001 which makes it an offence for a person to be in possession of any article with the intention that it be used in the commission of the offence of robbery. A new subsection is substituted for subsection (2) of section 15 which provides that it shall be a defence for a person to demonstrate that the article was not in his or her possession for the purposes of committing any of the offences specified in subsection (1) of section 15. This section also increases to €5,000 the maximum fine for the offence of withholding information in relation to stolen property under section 19 of the 2001 Act.

Amendment of Act of 1984

Section 48 amends the Criminal Justice Act 1984 in a number of respects. It amends section 6 to provide for the photographing and taking of fingerprints and palm prints from a person detained on a second or further occasion if the fingerprints, photographs or palm prints were imperfect. The power to authorise the taking of these identifiers generally is amended so that such authorisation may now be given at inspector level. A new section 6A is inserted to provide for the taking of fingerprints/palm prints using reasonable force where the detained person fails to cooperate. Appropriate safeguards are provided. This section also increases to €5,000 the maximum fine for the offence of withholding information in relation to firearms and ammunition under section 15 of the 1984 Act.

Destruction of records

Section 49 substitutes section 8 of the Criminal Justice Act 1984 by replacing the presumption in favour of destruction of fingerprints, palm prints and photographs with a presumption in favour of retention, but with a procedure to allow for destruction in appropriate cases.

Powers of detention for specified offences

Section 50 specifies the detention provisions under which the Gardaí may detain suspects for certain specified offences. Subsection (1) specifies the relevant offences to which the provisions of this section apply. Subsection (2) provides for a member of an Garda Síochána to arrest a person suspected of having committed an offence in subsection (1) and to detain that person in a Garda Station subject to the provisions of subsection (3).

Subsection (3) sets out the levels of authorisation, including judicial authorisation, needed to detain a suspect under this section. It provides that a suspect may be detained initially for a period not exceeding 6 hours, for a further period not exceeding 18 hours on the authorisation of a member of an Garda Síochána not below the rank of superintendent, for a further period not exceeding 24 hours on the authorisation of a member of an Garda Síochána not below the rank of chief superintendent, for a further period not exceeding 72 hours following a successful application to a District or Circuit Court judge by a member of an Garda Síochána not below the rank of chief superintendent and for a further 48 hours following a successful application to a District or Circuit Court judge by a member of an Garda Síochána not below the rank of chief superintendent.

All periods of detention are subject to the condition that such detention is necessary for the proper investigation of the offence in question and that proper custody records are maintained. A person shall not be detained under these provisions for a period exceeding more than 168 hours.

Rearrest

Section 51 specifies the conditions under which a person detained under the provisions of section 50 may or may not be rearrested. Such persons may only be rearrested on the authority of a judge of the Circuit Court or District Court following an application by a member of an Garda Síochána not below the rank of superintendent.

Application of certain provisions of Act of 1984

Section 52 applies the provisions of sections 4(4), 4(7), 4(8), 4(8A), 4(11), 5, 6(1) to 6(4), 8, 18, 19 and 19A of the Criminal Justice Act 1984 to persons detained under section 50. These provisions include safeguard provisions such as section 5 which concerns access to a solicitor and inference drawing provisions such as section 18, 19 and 19A (which have been substituted or inserted by sections 28, 29 and 30 of this Act).

Amendment of Criminal Justice (Forensic Evidence) Act 1990

Section 53 amends sections 2 and 4 of the 1990 Act to include references to the detention powers under section 50 of the Criminal Justice Act 2007 for the purposes of the taking of bodily samples and the destruction of records and samples under the 1990 Act.

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

Section 54 amends section 5 of the 1996 Act to reflect the amendments to the Criminal Justice Act 1984 introduced by this Act.

Amendment of section 9 of Act of 1984

Section 55 amends section 9 of the 1984 Act in order to update the list of provisions of the 1984 Act which apply to detention under section 30 of the Offences against the State Act 1939 and the powers conferred by section 7 of the Criminal Law (Jurisdiction) Act 1976.

Copy of recording of questioning by Garda Síochána to be given to accused

Section 56 sets out the circumstances in which a copy of any recording of the questioning of a person by the Garda Síochána may be given to the person. It provides that a copy of the recording may only be given to the person or his or her legal representative where that person is charged with an offence before a court and then, only if the court so directs. The court may make the giving of the copy of the recording subject to conditions. Section 56 revokes Regulation

16 of the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 (S.I. No. 74 of 1997) which governs the giving of copies of recordings at present.

Admission in evidence of recording of questioning of accused by Garda Síochána

Section 57 provides for the admissibility in evidence at the trial of a person of an electronic recording and/or a transcript of such a recording of the questioning of the person by the Garda Síochána in connection with the offence. The purpose of the section is to dispense with the obligation on the Garda Síochána to make a contemporaneous written record of an interview with a suspect, subject to certain safeguards, now that such interviews are routinely audio-visually recorded.

Amendment of section 8 of Criminal Assets Bureau Act 1996

Section 58 amends section 8 of the 1996 Act primarily in a technical manner. The purpose of the amendments is to set out precisely in legislation the circumstances in which a non-Garda Bureau officer may attend at, and participate in, the questioning of a detained person.

Amendment of section 29 of Courts of Justice Act 1924

Section 59 amends section 29 of the 1924 Act, as amended and restated in section 22 of the Criminal Justice Act 2006. The purpose of the amendments is to clarify two aspects of section 29 as amended. A new subsection (5A) is inserted for the purpose of clarifying that points other than the certified point can be argued before and determined by the Supreme Court in an appeal under section 29. A new subsection (9A) is inserted which provides that section 29 of the 1924 Act shall not affect the operation of section 3 of the Criminal Justice Act 1993 (which concerns the Director of Public Prosecutions' power to seek a review of unduly lenient sentences).

Amendment of section 99 of Act of 2006

Section 60 makes certain amendments to section 99 of the 2006 Act, which allows a court to wholly or partly suspend a sentence of imprisonment subject to the person entering into a recognisance to comply with certain conditions. The amendments are of a technical nature and are aimed at improving the operation of the section.

SCHEDULE 1

ENACTMENTS REPEALED

Schedule 1 specifies those sections which are to be repealed having regard to new section 19A of the Criminal Justice Act 1984 as inserted by section 30 of this Act.

SCHEDULE 2

Schedule 2 specifies certain serious offences. The offences are specified for the purposes of sections 25 and 26 of the Act.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Bealtaine, 2007*