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**CRIMINAL JUSTICE ACT 2006**

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AN ACT TO AMEND AND EXTEND THE POWERS OF THE GARDA SÍOCHÁNA IN RELATION TO THE INVESTIGATION OF OFFENCES; TO AMEND CRIMINAL LAW AND PROCEDURE IN OTHER RESPECTS, INCLUDING PROVISION FOR THE ADMISSIBILITY IN EVIDENCE OF CERTAIN WITNESS STATEMENTS, AN EXTENSION OF THE CIRCUMSTANCES IN WHICH THE ATTORNEY GENERAL IN ANY CASE OR, IF HE OR SHE IS THE PROSECUTING AUTHORITY IN A TRIAL, THE DIRECTOR OF PUBLIC PROSECUTIONS MAY REFER A QUESTION OF LAW TO THE SUPREME COURT FOR DETERMINATION OR TAKE AN APPEAL IN CRIMINAL PROCEEDINGS, PROVISION FOR OFFENCES RELATING TO ORGANISED CRIME, AMENDMENTS TO THE MISUSE OF DRUGS ACT 1977, AN OBLIGATION, IN THE INTERESTS OF THE COMMON GOOD, ON PERSONS CONVICTED ON INDICTMENT OF CERTAIN DRUG TRAFFICKING OFFENCES TO NOTIFY CERTAIN INFORMATION TO THE GARDA SÍOCHÁNA, PROVISIONS IN RELATION TO SENTENCING, A RESTRICTION OF THE OFFENCES TO WHICH SECTION 10(4) OF THE PETTY SESSIONS (IRELAND) ACT 1851 APPLIES, AN AMENDMENT OF THE JURISDICTION OF THE DISTRICT COURT AND THE CIRCUIT COURT IN CRIMINAL MATTERS, THE IMPOSITION OF FIXED CHARGES IN RESPECT OF CERTAIN OFFENCES UNDER THE CRIMINAL JUSTICE (PUBLIC ORDER) ACT 1994 AND AN AMENDMENT OF THE PETTY SESSIONS (IRELAND) ACT 1851 RELATING TO THE ISSUE AND EXECUTION OF CERTAIN WARRANTS; TO AMEND THE FIREARMS ACTS 1925 TO 2000 AND THE EXPLOSIVES ACT 1875; TO MAKE PROVISION IN RELATION TO ANTI-SOCIAL BEHAVIOUR BY ADULTS AND CHILDREN; TO AMEND THE CHILDREN ACT 2001; TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS AN COISTE COMHAIRLEACH UM CHÓDÚ AN DLÍ CHOIRIÚIL OR, IN THE ENGLISH LANGUAGE AS, THE CRIMINAL LAW CODIFICATION ADVISORY COMMITTEE AND TO PROVIDE FOR RELATED MATTERS.

[16th July, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

(...)

**PART 2**

**Investigation of Offences**

*Designation of place as crime scene.*

5.—(1) Where a member of the Garda Síochána is in—

(a) a public place, or

(b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

and he or she has reasonable grounds for believing that—

(i) an arrestable offence was, is being, or may have been committed in the place, or

(ii) there is, or may be, in the place evidence of, or relating to, the commission of an arrestable offence that was or may have been committed elsewhere,

he or she may, pending the giving of a direction under subsection (3) in relation to the place, take such of the steps specified in subsection (4) as he or she reasonably considers necessary to preserve any evidence of, or relating to, the commission of the offence.

(2) A member of the Garda Síochána who exercises powers under subsection (1) shall, as soon as reasonably practicable, request or cause a request to be made to a member of the Garda Síochána not below the rank of superintendent to give a direction under subsection

(3) in relation to the place concerned.

(3) A member of the Garda Síochána not below the rank of superintendent may give a direction designating a place as a crime scene if he or she has reasonable grounds for believing that—

(a) either—

(i) an arrestable offence was, is being, or may have been committed in the place, or

(ii) there is, or may be, in the place evidence of, or relating to, the commission of an arrestable offence that was, or may have been, committed elsewhere,

and

(b) it is necessary to designate the place as a crime scene to preserve, search for and collect evidence of, or relating to, the commission of the offence.

(4) A direction under subsection (3) shall authorise such members of the Garda Síochána as a member of the Garda Síochána not below the rank of superintendent considers appropriate to take such steps, including all or any of the following, as they reasonably consider necessary to preserve, search for and collect evidence at the crime scene to which the direction relates:

(a) delineating and segregating the area of the crime scene by means of notices, markings or barriers;

(b) directing a person to leave the crime scene;

(c) removing a person who fails to comply with a direction to leave the crime scene;

(d) directing a person not to enter the crime scene;

(e) preventing a person from entering the crime scene;

(f) permitting a person authorised under subsection (5) to enter the crime scene;

(g) preventing a person from removing anything which is, or may be, evidence or otherwise interfering with the crime scene or anything at the scene;

(h) securing the crime scene from any unauthorised intrusion or disturbance;

(i) searching the crime scene and examining the scene and anything at the scene; and

(j) photographing or otherwise recording the crime scene or anything at the scene.

(5) A member of the Garda Síochána not below the rank of superintendent may authorise such persons as he or she considers appropriate to enter a crime scene for a specified purpose and for such period as he or she may determine.

(6) The period for which a direction under subsection (3) is in force shall not be longer than is reasonably necessary to preserve, search for and collect the evidence concerned.

(7) A direction under subsection (3) in relation to a place other than a public place shall, subject to subsections (9) to (11), cease to be in force 24 hours after it is given.

(8) (a) A direction under subsection (3) may be given orally or in writing and, if it is given orally, shall be recorded in writing as soon as reasonably practicable but a failure to record the direction shall not by itself render any evidence inadmissible.

(b) A direction under subsection (3) or, if it is given orally, the written record of it shall be signed by the member of the Garda Síochána giving it, shall describe the place thereby designated as a crime scene, shall state the date and time when it is given, the name and rank of the member giving it and that the member has reasonable grounds for believing that the direction is necessary to preserve, search for and collect the evidence concerned.

(9) If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána not below the rank of superintendent that—

(a) a direction under subsection (3) designating a place as a crime scene is in force,

- (b) there are reasonable grounds for believing that there is, or may be, evidence at the crime scene,
- (c) the continuance of the direction in force is necessary to preserve, search for and collect any such evidence, and
- (d) the investigation of the offence to which any such evidence relates is being conducted diligently and expeditiously,

the judge may make an order continuing the direction in force for such further period, not exceeding 48 hours, as may be specified in the order commencing upon the expiration of the period for which the direction is in force.

(10) A direction under subsection (3) may be continued in force under subsection (9) not more than three times.

(11) If the High Court is satisfied, upon application being made to it in that behalf by a member of the Garda Síochána not below the rank of superintendent, that—

- (a) a direction under subsection (3) designating a place as a crime scene is in force,
- (b) there are reasonable grounds for believing that there is, or may be, evidence at the crime scene,
- (c) exceptional circumstances exist which warrant the continuance of the direction in force to preserve, search for and collect any such evidence, and
- (d) the investigation of the offence to which any such evidence relates is being conducted diligently and expeditiously,

the Court may make an order continuing the direction in force for such period as it considers appropriate and that is specified in the order (whether or not the direction has been continued in force under subsection (9)) commencing upon the expiration of the period for which the direction is in force.

(12) A member of the Garda Síochána who intends to make an application under subsection (9) or (11) shall, if it is reasonably practicable to do so before the application is made, give notice of it to—

- (a) the occupier of the place the subject of the application, or
- (b) if it is not reasonably practicable to ascertain the identity or whereabouts of the occupier or the place is unoccupied,

the owner, unless it is not reasonably practicable to ascertain the identity or whereabouts of the owner.

(13) If, on an application under subsection (9) or (11), the occupier or owner of the place concerned applies to be heard by the Court, an order shall not be made under subsection (9) or (11), as may be appropriate, unless an opportunity has been given to the person to be heard.

(14) The High Court or a judge of the District Court, as may be appropriate, may attach such conditions as the Court or the judge considers appropriate to an order under subsection (9) or (11) for the purpose of protecting the interests of the occupier or owner of the place which is the subject of the order.

(15) A direction under subsection (3) shall be deemed to continue in force until the determination of an application under subsection (9) or (11) if—

- (a) the direction is in force when the application is made, and
- (b) the direction would, but for this subsection, expire before the determination of the application by reason of the fact that, pursuant to subsection (13), an opportunity is given to a person to be heard.

(16) A person who obstructs a member of the Garda Síochána in the exercise of his or her powers under this section or who fails to comply with a direction under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(17) A member of the Garda Síochána may arrest without warrant any person whom the member reasonably suspects of committing or having committed an offence under subsection (16).

(18) Nothing in this section shall prevent—

(a) the designation of a place as a crime scene, or

(b) a member of the Garda Síochána from taking any of the steps referred to in subsection (4) at a place so designated,

if the owner or occupier of the place consents to such designation or the taking of any of those steps.

(19) In this section—

“evidence” means evidence of, or relating to, the commission of an arrestable offence;

“preserve”, in relation to evidence, includes any action to prevent the concealment, loss, removal, contamination or destruction of, or damage or alteration to, the evidence.

*Search warrants in relation to arrestable offences.*

**6.—**(1) The Criminal Justice (Miscellaneous Provisions) Act 1997 is amended by—

(a) the substitution of the following section for section 10:

“Search warrants in relation to arrestable offences.

10.—(1) If a judge of the District Court is satisfied by information on oath of a member not below the rank of sergeant that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an arrestable offence is to be found in any place, the judge may issue a warrant for the search of that place and any persons found at that place.

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

(a) to enter, at any time or times within one week of the date of issue of the warrant, on production if so requested of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search it and any persons found at that place, and

(c) to seize anything found at that place, or anything found in the possession of a person present at that place at the time of the search, that that member reasonably believes to be evidence of, or relating to, the commission of an arrestable offence.

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

(a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct the member in the carrying out of his or her duties,

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

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

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

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

(6) 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;

'place' means a physical location and includes—

- (a) a dwelling, residence, building or abode,
- (b) a vehicle, whether mechanically propelled or not,
- (c) a vessel, whether sea-going or not,
- (d) an aircraft, whether capable of operation or not, and
- (e) a hovercraft."

and

- (b) the deletion of the First Schedule.

(2) This section shall not affect the validity of a warrant issued under section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 before the commencement of this section and such a warrant shall continue in force in accordance with its terms after such commencement.

*Power to seize and retain evidence.*

**7.—**(1) Where a member of the Garda Síochána who is in—

- (a) a public place, or
- (b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

finds or comes into possession of any thing, and he or she has reasonable grounds for believing that it is evidence of, or relating to, the commission of an arrestable offence, he or she may seize and retain the thing for use as evidence in any criminal proceedings for such period from the date of seizure as is reasonable or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings, and thereafter the Police (Property) Act 1897 shall apply to the thing so seized in the same manner as that Act applies to property which has come into the possession of the Garda Síochána in the circumstances mentioned in that Act.

(2) If it is represented or appears to a member of the Garda Síochána proposing to seize or retain a document under this section that the document was, or may have been, made for the purpose of obtaining, giving or communicating legal advice from or by a barrister or solicitor, the member shall not seize or retain the document unless he or she suspects with reasonable cause that the document was not made, or is not intended, solely for any of the purposes aforesaid.

(3) The power under this section to seize and retain evidence is without prejudice to any other power conferred by statute or otherwise exercisable by a member of the Garda Síochána to seize and retain evidence of, or relating to, the commission or attempted commission of an offence.

(...)

### **PART 3**

#### **Admissibility of Certain Witness Statements**

*Definitions (Part 3).*

**15.—**In this Part—

"audiorecording" includes a recording, on any medium, from which sound may by any means be produced, and cognate words shall be construed accordingly;

"proceedings" includes proceedings under section 4E (application by accused for dismissal of charge) of the Act of 1967 where oral evidence (within the meaning of subsection (5) of that section) is given;

"statement" means a statement the making of which is duly proved and includes—

- (a) any representation of fact, whether in words or otherwise,
- (b) a statement which has been videorecorded or audiorecorded, and
- (c) part of a statement;

"statutory declaration" includes a statutory declaration made under section 17 or 18;

"videorecording" includes a recording, on any medium, from which a moving image may by any means be produced, together with the accompanying soundrecording, and cognate words shall be construed accordingly.

*Admissibility of certain witness statements.*

**16.—**(1) Where a person has been sent forward for trial for an arrestable offence, a statement relevant to the proceedings made by a witness (in this section referred to as "the statement") may, with the leave of the court, be admitted in accordance with this section as evidence of any fact mentioned in it if the witness, although available for cross-examination—

- (a) refuses to give evidence,
- (b) denies making the statement, or
- (c) gives evidence which is materially inconsistent with it.

(2) The statement may be so admitted if—

- (a) the witness confirms, or it is proved, that he or she made it,
- (b) the court is satisfied—
  - (i) that direct oral evidence of the fact concerned would be admissible in the proceedings,
  - (ii) that it was made voluntarily, and
  - (iii) that it is reliable,

and

(c) either—

- (i) the statement was given on oath or affirmation or contains a statutory declaration by the witness to the effect that the statement is true to the best of his or her knowledge or belief, or
- (ii) the court is otherwise satisfied that when the statement was made the witness understood the requirement to tell the truth.

(3) In deciding whether the statement is reliable the court shall have regard to—

- (a) whether it was given on oath or affirmation or was videorecorded, or
- (b) if paragraph (a) does not apply in relation to the statement, whether by reason of the circumstances in which it was made, there is other sufficient evidence in support of its reliability,

and shall also have regard to—

- (i) any explanation by the witness for refusing to give evidence or for giving evidence which is inconsistent with the statement, or

(ii) where the witness denies making the statement, any evidence given in relation to the denial.

(4) The statement shall not be admitted in evidence under this section if the court is of opinion—

(a) having had regard to all the circumstances, including any risk that its admission would be unfair to the accused or, if there are more than one accused, to any of them, that in the interests of justice it ought not to be so admitted, or

(b) that its admission is unnecessary, having regard to other evidence given in the proceedings.

(5) In estimating the weight, if any, to be attached to the statement regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(6) This section is without prejudice to sections 3 to 6 of the Criminal Procedure Act 1865 and section 21 (proof by written statement) of the Act of 1984.

*Witness statements made to members of Garda Síochána.*

**17.—**(1) A person who makes a statement to a member of the Garda Síochána during the investigation of an arrestable offence (not being a person who is at that time suspected by any such member of having committed it) may make a statutory declaration that the statement is true to the best of the person's knowledge and belief.

(2) For the purposes of section 1(1)(d) of the Statutory Declarations Act 1938 a member of the Garda Síochána may take and receive a statutory declaration made under subsection (1).

(3) Instead of taking and receiving such a statutory declaration the member may take the person's statement on oath or affirmation and for that purpose may administer the oath or affirmation to him or her.

*Other witness statements.*

**18.—**(1) In this section—

"competent person" means a person employed by a public authority and includes an immigration officer who is deemed to have been appointed as such an officer under section 3 of the Immigration Act 2004;

"public authority" means—

(a) a Minister of the Government,

(b) the Commissioners of Public Works in Ireland,

(c) a local authority within the meaning of the Local Government Act 2001,

(d) the Health Service Executive,

(e) a harbour authority within the meaning of the Harbours Act 1946,

(f) a board or other body (not being a company) established by or under statute,

(g) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or

(h) a company in which all the shares are held by a board or other body referred to in paragraph (f), or by a company referred to in paragraph (g).

(2) A person who makes a statement to a competent person in the course of the performance of the competent person's official duties may make a statutory declaration that the statement is true to the best of the person's knowledge and belief.

(3) For the purposes of section 1(1)(d) of the Statutory Declarations Act 1938 a competent person may take and receive a statutory declaration made under subsection (2).

*Regulations concerning certain witness statements which are recorded.*

**19.—**(1) The Minister may, in relation to any statements of witnesses that may be videorecorded or audiorecorded by members of the Garda Síochána while investigating offences, make provision in regulations for—

- (a) the manner in which any such recordings are to be made and preserved, and
- (b) the period for which they are to be retained.

(2) Any failure by a member of the Garda Síochána to comply with a provision of the regulations shall not of itself—

- (a) render the member liable to civil or criminal proceedings, or
- (b) without prejudice to the power of a court to exclude evidence at its discretion, render inadmissible in evidence anything said during the recording concerned.

## **PART 7**

### **Organised Crime**

(...)

*Proceedings relating to offences committed outside State.*

**74.—**(1) Proceedings for an offence under section 71 or 72 in relation to an act committed outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

(2) Where a person is charged with an offence referred to in subsection (1), 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.

(3) The Director of Public Prosecutions may take, or consent to the taking of, further proceedings against a person for an offence in respect of an act to which subsection (1) of section 71 applies and that is committed outside the State in the circumstances referred to in subsection (3) of that section if satisfied—

(a) that—

(i) a request for a person's surrender for the purpose of trying him or her for an offence in respect of that act has been made under Part II of the Extradition Act 1965 by any country, and

(ii) the request has been finally refused (whether as a result of a decision of the court or otherwise),

or

(b) that—

(i) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of that act, and

(ii) a final determination has been made that the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned,

or

(c) that, because of the special circumstances (including, but not limited to, the likelihood of a refusal referred to in paragraph (a)(ii) or a determination referred to in paragraph (b)(ii)), it is expedient that proceedings be taken against the person for an offence under the law of the State in respect of the act.

(4) In this section "European arrest warrant" and "issuing state" have the meanings they have in section 2(1) of the European Arrest Warrant Act 2003.



*Evidence in proceedings under this Part.*

**75.—**(1) In any proceedings for an offence under section 71—

(a) a certificate that is signed by an officer of the Department of Foreign Affairs and states that—

(i) a passport was issued by that Department of State to a person on a specified date, and

(ii) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence concerned is alleged to have been committed, unless the contrary is shown, and

(b) a certificate that is signed by the Director of Public Prosecutions or by a person authorised by him or her and that states that any of the matters specified in paragraph (a), (b) or (c) of section 74(3) is evidence of the facts stated in the certificate, unless the contrary is shown.

(2) A document purporting to be a certificate under subsection (1) is deemed, unless the contrary is shown—

(a) to be such a certificate,

(b) to have been signed by the person purporting to have signed it, and

(c) in the case of a certificate signed with the authority of the Minister for Foreign Affairs or the Director of Public Prosecutions, to have been signed in accordance with the authorisation.

(...)