



Number 22 of 1984

CRIMINAL JUSTICE ACT 1984

REVISED

Updated to 28 August 2017

This revised Act is an administrative consolidation of the *Criminal Justice Act 1984*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *National Shared Services Office Act 2017 (26/2017)*, enacted 26 July 2017, and all statutory instruments up to and including *Criminal Justice Act 1984 (Suspension of Detention under Section 4(3A)) (Persons under 18 years of age) Regulations 2017 (S.I. No. 380 of 2017)*, made 22 August 2017, were considered in the preparation of this revision.

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Introduction

This revision presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1994, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ACTS REFERRED TO

Children Act, 1908	1908, c. 67
Criminal Justice Act, 1951	1951, No. 2
Criminal Justice (Evidence) Act, 1924	1924, No. 37
Criminal Law Act, 1976	1976, No. 32
Criminal Law (Jurisdiction) Act, 1976	1976, No. 14
Criminal Procedure Act, 1865	1865, c. 18
Criminal Procedure Act, 1967	1967, No. 12
Explosive Substances Act, 1883	1883, c. 3
Firearms Act, 1925	1925, No. 17
Firearms Act, 1964	1964, No. 1
Firearms Acts, 1925 to 1971	
Misuse of Drugs Act, 1977	1977, No. 12
Offences against the State Act, 1939	1939, No. 13
Probation of Offenders Act, 1907	1907, c. 17



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AN ACT TO AMEND CRIMINAL LAW AND PROCEDURE. [6th December, 1984]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- Commencement. **1.**—(1) This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister for Justice either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions of this Act.
- (2) An order shall not be made under *subsection (1)* in respect of any of the following sections namely, *sections 4 to 6, 8 to 10, 15, 16, 18 and 19* until provisions relating to the investigation of complaints from the public against [**members (within the meaning of the Garda Síochána (Complaints) Act, 1986)**] and the adjudication by a body other than the Garda Síochána of such complaints have been enacted by the Oireachtas and have come into operation and until regulations under *section 7* have been made.
- (3) *Sections 12 and 14* shall not apply in relation to offences committed before the commencement of the section concerned.
- Duration of certain sections. **2.**—Each of the following sections, namely, *sections 4 to 6, 8 to 10, 15, 16, 18 and 19* shall cease to be in operation at the expiry of four years from the commencement of that section unless a resolution has been passed by each House of the Oireachtas resolving that that section should continue in operation.
- Interpretation. **3.**—(1) In this Act, except where the context otherwise requires—
- “the Act of 1939” means the Offences against the State Act, 1939;
- [‘**Commissioner**’ means the **Commissioner of the Garda Síochána;**]
- “imprisonment” includes penal servitude and detention in Saint Patrick’s Institution;
- “place” includes any building or part of a building, vehicle, vessel, aircraft or hovercraft and any other place whatsoever.
- [‘**photograph**’ includes a negative or any other image howsoever produced of a **photograph.**]

(2) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

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

*Detention of Arrested Persons in Garda
Síochána Custody in Certain Circumstances*

Detention after
arrest.

4.—(1) This section applies to any offence for which a person of full age and capacity and not previously convicted may, [under or by virtue of any enactment or the common law], be punished by imprisonment for a term of five years or by a more severe penalty and to an attempt to commit any such offence.

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

(i) if not already in a Garda Síochána station, may be taken to and detained in a Garda Síochána station, or

(ii) if he or she is arrested in a Garda Síochána station, may be detained in the station,

for such period as is authorised by this section if the member of the Garda Síochána in charge of the station to which the person is taken on arrest or in which he or she is arrested has at the time of the 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.

(b) Where a member of the Garda Síochána arrests a person pursuant to an authority of a judge of the District Court under *section 10(1)*, the person may be taken to and detained in a Garda Síochána station for such period as is authorised by this section if the member of the Garda Síochána in charge of the station to which the person is taken on arrest has at the time of the person's arrival at the station 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 so arrested may be detained shall, subject to the provisions of this section, not exceed six hours from the time of his arrest.

(b) An officer 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 six hours if he has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence.

[(bb) 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 twelve 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 direction under [paragraph (b) or (bb)] may be given orally or in writing and if given orally shall be recorded in writing as soon as practicable.

- [(3A) (a) Notwithstanding the generality of *subsection (3)*, if a person is detained pursuant to this section in respect of a relevant offence, the member of the Garda Síochána in charge of the Garda Síochána station where the person is being detained may, at any time during the detention, where the member has reasonable grounds for believing that it is necessary for the purpose of permitting enquiries or investigations to be made for the further and proper investigation of the offence concerned, suspend the detention of the person.
- (b) Where the member of the Garda Síochána in charge of the Garda Síochána station suspends a person's detention under this subsection, the person shall, subject to *subsection (5A)*, be released from custody forthwith unless his or her detention is authorised apart from this Act.
- (3B) (a) A person's detention pursuant to this section in respect of a relevant offence may be suspended under *subsection (3A)* on no more than 2 occasions.
- (b) The total period of time for which a person's detention may be suspended shall not in any case exceed a period of 4 months from the date on which the detention was first suspended.
- (c) Subject to *paragraph (d)*, a person whose detention is suspended under *subsection (3A)* shall return to such Garda Síochána station at such date and time as is specified by notice in writing given to him or her under *subsection (3C)* or at such other date and time or Garda Síochána station as may be notified to him or her in writing under *subsection (3D)*.
- (d) Where, in the case of a person whose detention is suspended under *subsection (3A)*—
- (i) his or her detention is continued in respect of another offence, and
- (ii) the total period of detention permissible under *subsection (9)* is reached during that continuation of detention,
- the member of the Garda Síochána in charge of the Garda Síochána station concerned shall give the person concerned notice in writing or cause him or her to be given notice in writing of that fact, and the notice under *subsection (3C)* or *(3D)*, as the case may be, shall be deemed to be withdrawn accordingly.
- (3C) (a) Where a person's detention is suspended under *subsection (3A)*, the member of the Garda Síochána in charge of the Garda Síochána station concerned shall give the person notice in writing or cause him or her to be given notice in writing—
- (i) that his or her detention is being suspended,
- (ii) of the Garda Síochána station and of the date and time on which he or she is required to return to such station for the continuation of the detention concerned, and
- (iii) of the consequences under *sections 4A* and *4B* of failing to return in accordance with *subsection (3B)*.
- (b) A member of the Garda Síochána when giving the notice to any person under *paragraph (a)* shall explain to him or her orally the effect of the notice.
- (3D) (a) Subject to *subsection (3B)(b)*, a member of the Garda Síochána not below the rank of inspector may, in respect of a person whose detention has been suspended under *subsection (3A)*, issue a notice in writing to the person appointing a new date and time or a different Garda Síochána station for the person's return for the continuation of the detention concerned where that member has reasonable grounds for believing that it is necessary for the proper investigation of the offence concerned to so change the return date and time or the Garda Síochána station, as the case may be.

- (b) The person in respect of whom the notice under *paragraph (a)* is issued shall be given such notice of the new date and time or Garda Síochána station appointed under that paragraph as shall be prescribed in regulations made by the Minister under *section 4C*.
- (c) Only one notice under *paragraph (a)* may be issued to a person during each period of suspension, but nothing in this paragraph shall prejudice the exercise of the power to issue such notice in the circumstances referred to in *paragraph (d)*.
- (d) A member of the Garda Síochána not below the rank of inspector may—
- (i) if a person whose detention is suspended under *subsection (3A)* so requests, and
 - (ii) the member is satisfied that there is good and sufficient reason for doing so,
- issue a notice under *paragraph (a)*.
- (3E)(a) Where a person returns in accordance with *subsection (3B)* or is returned under *section 4A* to the Garda Síochána station—
- (i) his or her detention shall be continued in accordance with this section for such period as is authorised by this section, and
 - (ii) the period of time commencing on his or her return to the Garda Síochána station for the continuation of the detention concerned shall be included in reckoning a period of detention permitted by this section.
- (b) Where, however, the member of the Garda Síochána in charge of the Garda Síochána station concerned no longer has, at the time of the person's return, reasonable grounds for believing that the person's continued detention is necessary for the proper investigation of the offence, the person shall, subject to *subsection (5A)*, be released from custody forthwith unless his or her detention is otherwise authorised by law.
- (3F) For the avoidance of doubt it is hereby declared that—
- (a) where a person's detention is suspended under *subsection (3A)*, the detention shall remain suspended until such time as it is continued under *subsection (3E)* and, accordingly, the period of time during which the detention remains suspended shall be excluded in reckoning a period of detention permitted by this section,
 - (b) where a person whose detention is suspended under *subsection (3A)* in respect of an offence, is subsequently arrested and detained ('subsequent arrest and detention') in respect of another offence, the subsequent arrest and detention shall not operate to affect the detention which was suspended and it shall remain suspended until such time as it is continued under *subsection (3E)*,
 - (c) subject to *subsection (9)*, where a person's detention is suspended under *subsection (3A)* in respect of an offence but his or her detention is continued under *subsection (5A)* in respect of another offence, the continuation of the detention under *subsection (5A)* shall not operate to affect the detention which was suspended in respect of the first mentioned offence and the detention shall in so far as it relates to the first mentioned offence remain suspended until such time as it is continued under *subsection (3E)*.]
- (4) If at any time during the detention of a person pursuant to this section there are no longer reasonable grounds for suspecting that he has committed an offence to which this section applies, he shall be released from custody forthwith unless his detention is authorised apart from this Act.

[(5) If at any time during the detention of a person pursuant to this section there are no longer reasonable grounds for believing that his detention is necessary for the proper investigation of the offence to which the detention relates, he shall, [subject to *subsection (5A)*], be released from custody forthwith unless he 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 detention is authorised apart from this Act.

[(5A)]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 an offence to which the detention relates or an offence in respect of which the person's detention has been suspended under *subsection (3A)*], 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 that 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.]

- (6) (a) If a person is being detained pursuant to this section in a Garda Síochána station between midnight and 8 a.m. and the member in charge of the station is of opinion that any questioning of that person for the purpose of the investigation should be suspended in order to afford him reasonable time to rest, and that person consents in writing to such suspension, the member may give him a notice in writing (which shall specify the time at which it is given) that the investigation (so far as it involves questioning of him) is suspended until such time as is specified in the notice and shall ask him to sign the notice as an acknowledgement that he has received it; and, if the notice is given, the period between the giving thereof and the time specified therein (not being a time later than 8 a.m.) shall be excluded in reckoning a period of detention permitted by this section and the powers conferred by *section 6* shall not be exercised during the period so excluded:

Provided that not more than one notice under this paragraph shall be given to a person during any period between midnight and 8 a.m.

- (b) A notice under *paragraph (a)* may, for serious reasons, be withdrawn by a subsequent notice given in like manner, and in that event any time subsequent to the giving of the second notice shall not be excluded under that paragraph.
- (c) A member of the Garda Síochána when giving a notice to any person under *paragraph (a)* or *(b)* shall explain to him orally the effect of the notice.
- (d) The following particulars shall be entered in the records of the Garda Síochána station without delay—
- (i) the time of the giving of a notice under *paragraph (a)* and the time specified therein as the time up to which the questioning is being suspended,
 - (ii) whether the person being detained acknowledged that he received the notice, and
 - (iii) the time of the giving of any notice under *paragraph (b)*.
- (e) Records kept in pursuance of *paragraph (d)* shall be preserved for at least twelve months and, if any proceedings are taken against the person in question for the offence in respect of which he was detained, until the conclusion of the proceedings (including any appeal or retrial).
- (7) (a) Subject to *paragraph (b)*, *subsection (2)* shall not apply to a person below the age of twelve years.
- (b) If the member in charge of the Garda Síochána station in which a person is detained has reasonable grounds for believing that the person is not below the age of twelve years the subsection shall apply to him as if he were of that age, provided that, where such member ascertains or has reasonable

grounds for believing that the person is below that age, he shall be released from custody forthwith unless his detention is authorised apart from this Act.

(8) Where it appears to a member of the Garda Síochána that a person arrested in the circumstances mentioned in *subsection (2)* is in need of medical attention, or where during his detention it comes to notice that he is in need of such attention, and he is taken for that purpose to a hospital or other suitable place, the time before his arrival at the station or the time during which he is absent from the station, as the case may be, shall be excluded in reckoning a period of detention permitted by this section.

[(8A) Where a person detained pursuant to *subsection (2)* is taken to a court in connection with an application relating to the lawfulness of his detention, the time during which he is absent from the station for that purpose shall be excluded in reckoning a period of detention permitted by this section.]

[(8B) (a) Where a medical practitioner—

(i) has, at the request of a member of the Garda Síochána, assessed the condition of a person detained pursuant to *subsection (2)*, and

(ii) certifies that the person, although the person's condition is not such as to require the person's hospitalisation, is unfit for any questioning for the purpose of the investigation for a specified period,

no questioning of the person shall take place during that period and that period shall be excluded in reckoning a period of detention permitted by this section.

(b) The period that may be specified in a certificate provided under *paragraph (a)* by a medical practitioner shall not exceed 6 hours.

(c) A certificate may be provided under *paragraph (a)* on one occasion only in respect of the particular person detained pursuant to *subsection (2)*.]

(9) To avoid doubt, it is hereby declared that a person who is being detained pursuant to *subsection (2)* in connection with an offence shall in no case be held in detention (whether for the investigation of that or any other offence) [for longer than twenty-four hours] from the time of his arrest, not including any period which is to be excluded under [*subsection (3F)(a), (6), (8), (8A) or (8B) or section 4A or 5A*] in reckoning a period of detention.

(10) Nothing in this section shall affect the operation of section 30 of the Act of 1939.

(11) The powers conferred by this section are without prejudice to any powers exercisable by a member of the Garda Síochána in relation to offences other than offences to which this section applies.

[(12) In this section 'relevant offence' has the meaning it has in the Criminal Justice Act 2011.]

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

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

(a) arrest the person without warrant, and

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

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

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

[Offence of failing to return to Garda Síochána station.

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

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

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

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

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

(a) the form of notices for the purposes of *subsections (3B)*, *(3C)* and *(3D)* of *section 4*, and

(b) the notice period for the purpose of *section 4(3D)(b)*.

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

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

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

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

Access to solicitor and notification of detention.

5.—(1) Where a person not below the age of [eighteen years] is detained in a Garda Síochána station pursuant to *section 4*, the member of the Garda Síochána in charge of the station shall inform him or cause him to be informed without delay that he is entitled to consult a solicitor and to have notification of his detention and of the station where he is being detained sent to one other person reasonably named by him and shall, on request, cause the solicitor and the named person to be notified accordingly as soon as practicable.

(2) [...]

(3) If and for so long as the member of the Garda Síochána in charge of a Garda Síochána station in which a person is detained pursuant to *section 4* has reasonable grounds for believing that the person is not below the age of [eighteen years], the provisions of *subsection (1)* shall apply as if he were of that age.

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

5A.—...

[Regulations regarding access to solicitor during detention.

5B.—...

Powers of Garda Síochána in relation to detained person.

6.—(1) Where a person is detained pursuant to *section 4*, a member of the Garda Síochána may—

- (a) demand of him his name and address;
- (b) search him or cause him to be searched;
- (c) photograph him or cause him to be photographed;
- (d) take, or cause to be taken, his fingerprints and palm prints;
- (e) [...]
- (f) seize and retain for testing anything that he has in his possession.

[(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.]

[(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.]

(3) *Subsection (1) (b)* does not empower a member of the Garda Síochána to require a person to remove his underclothing, except where such member, with reasonable cause, suspects that he has concealed on his person a controlled drug (within the meaning of section 2 of the Misuse of Drugs Act, 1977) or an explosive substance and a member of the Garda Síochána not below the rank of superintendent so authorises.

(4) Any person who obstructs or attempts to obstruct any member of the Garda Síochána or any other person acting under the powers conferred by *subsection (1)* or who fails or refuses to give his name and address when demanded, or gives a name or address which is false or misleading, shall be guilty of an offence and shall be liable on summary conviction to [a class A fine] or to imprisonment for a term not exceeding 12 months or to both.

(5) Section 7 (2) of the Criminal Law Act, 1976, is hereby amended by the substitution in paragraph (a), for “£500”, of “£1,000” and by the deletion of paragraph (b).

[Use of reasonable force in certain circumstances.

6A.—[(1) Without prejudice to the generality of *section 6*, a member of the Garda Síochána and the member or members of the Garda Síochána assisting that member 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 is reasonably considered necessary—

(i) to take the photograph or fingerprints and palm prints, or

(ii) to prevent them from being lost, damaged or otherwise being made imperfect,

or both.]

(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 it is intended to exercise the power conferred by *subsection (1)*, one of the members of the Garda Síochána concerned 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 and that member shall determine the number of members of the Garda Síochána that is reasonably necessary for the purposes of *subsection (1)*].

(5) The taking of such photographs and fingerprints and palm prints shall be [recorded by electronic or similar means].]

Regulations regarding treatment of persons in custody.

7.—(1) The Minister shall make regulations providing for the treatment of persons in custody in Garda Síochána stations.

(2) The regulations shall include provision for the assignment to the member of the Garda Síochána in charge of a Garda Síochána station, or to some other member, of responsibility for overseeing the application of the regulations at that station, without prejudice to the responsibilities and duties of any other member of the Garda Síochána.

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

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

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

[Destruction of fingerprints, palm prints and photographs

8.— (1) A fingerprint, palm print or photograph of a person taken in pursuance of the powers conferred by *section 6* or *6A* shall, if not previously destroyed, be destroyed in accordance with this section and *sections 8A* to *8I*.

(2) Subject to *section 8A*, a fingerprint, palm print or photograph of a person referred to in *subsection (1)* shall, if not previously destroyed, be destroyed in any of the following circumstances not later than the expiration of the period of 3 months from the date on which such circumstances first apply to the person:

(a) where proceedings for an offence to which *section 4* applies—

- (i) are not instituted against the person within the period of 12 months from the date of the taking of the fingerprint, palm print or photograph concerned, 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
- (ii) have been instituted and—
 - (I) the person is acquitted of the offence,
 - (II) the charge against the person in respect of the offence is dismissed under section 4E of the Criminal Procedure Act 1967, or
 - (III) the proceedings for the offence are discontinued;
- (b) the person is the subject of an order under section 1(1) of the Probation of Offenders Act 1907 in respect of the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken and he or she has not been convicted of an offence to which *section 4* applies during the period of 3 years from the making of the order under that Act;
- (c) subject to *subsection (3)*, the person is the subject of an order under section 1(2) of the Probation of Offenders Act 1907 in respect of the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken and he or she has not been convicted of an offence to which *section 4* applies during the period of 3 years from the making of the order under that Act;
- (d) the person's conviction for the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken is quashed;
- (e) the person's conviction for the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.

(3) *Subsection (2)(c)* shall not apply to an order under section 1(2) of the Probation of Offenders Act 1907 discharged on the appeal of a person against conviction for the offence concerned if on appeal his or her conviction is affirmed.

(4) For the purposes of this section the 'retention period', in relation to a fingerprint, palm print or photograph, means the period from the taking of the fingerprint, palm print or photograph, as the case may be, from a person to the latest date for the destruction of that fingerprint, palm print or photograph under *subsection (2)*.]

[Extension of retention period under *section 8* for fingerprints, palm prints and photographs in certain circumstances.

8A.— (1) A fingerprint, palm print or photograph taken from or of a person shall not be destroyed under *section 8* in any case in which the Commissioner determines that any of the following circumstances apply:

- (a) a decision has not been taken whether or not to institute proceedings against the person for the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken;
- (b) the investigation of that offence has not been concluded;
- (c) the fingerprint, palm print or photograph concerned, and the results of any examination or analysis of it, are likely to be required for the prosecution of an offence connected with the event, incident or circumstances the subject of the offence concerned—
 - (i) for use as evidence in such proceedings,
 - (ii) for disclosure to, or use by, a defendant in such proceedings, or

- (iii) to support the admissibility of any evidence on which the prosecution may seek to rely in such proceedings;
 - (d) having regard to the matters specified in *subsection (2)*, the Commissioner believes it is necessary to retain the fingerprint, palm print or photograph concerned in connection with the investigation of the offence concerned taking account of all the circumstances of the case and the reasons why—
 - (i) proceedings for that offence have not been instituted against the person, or
 - (ii) if such proceedings have been instituted against the person, they were determined without he or she being convicted of the offence concerned or he or she being the subject of an order under section 1(1) of the Probation of Offenders Act 1907;
 - (e) there are reasonable grounds for believing that the fingerprint, palm print or photograph of the person may be required in connection with the investigation of an offence to which *section 4* applies, other than the offence in connection with which the fingerprint, palm print or photograph was taken, which the person is suspected of having committed.
- (2) The matters referred to in *subsection (1)(d)* to which the Commissioner shall have regard are the following:
- (a) whether the person concerned has any previous conviction for an offence similar in nature or gravity to the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken from or of him or her;
 - (b) the nature and seriousness of that offence;
 - (c) whether any alleged victim, or any intended victim, of that offence was—
 - (i) a child,
 - (ii) a vulnerable person, or
 - (iii) associated with the person,at the time of the commission, or alleged commission, of that offence; and
 - (d) any other matter that the Commissioner considers appropriate for the purposes of the determination.
- (3) If, in relation to a fingerprint, palm print or photograph taken from or of a person, the Commissioner determines that one of the paragraphs of *subsection (1)* applies, then, he or she may, during the retention period referred to in *section 8*, give an authorisation to extend that period by a period of 12 months.
- (4) The Commissioner may, while an authorisation under *subsection (3)* or this subsection, as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a period of 12 months commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she determines that one of the paragraphs of *subsection (1)* applies.
- (5) Whenever the Commissioner gives an authorisation under *subsection (3)* or (4), he or she shall, in relation to a fingerprint, palm print or photograph taken from or of a person that is the subject of the authorisation, cause the person to be informed by notice in writing that the authorisation has been given under *subsection (3)* or (4), as may be appropriate, the date on which that authorisation was given and of the right of appeal under *subsection (6)*.

(6) The person to whom the authorisation concerned relates (in this section called 'the appellant') may, within the period of 3 months from the date of the notice under *subsection (5)* concerned, appeal to the District Court against that authorisation.

(7) An appeal under *subsection (6)* shall—

- (a) be on notice to the Commissioner, and
- (b) be heard otherwise than in public.

(8) If, on an appeal under *subsection (6)*, the District Court—

- (a) confirms the authorisation concerned, or
- (b) allows the appeal,

the Commissioner shall give effect to the decision of the Court.

(9) The jurisdiction conferred on the District Court by this section shall be exercised by a judge of the District Court who is assigned to the district court district in which the appellant ordinarily resides or, if the appellant does not ordinarily reside in the State, by a judge of the District Court who is assigned to the district court district in which the fingerprint, palm print or photograph concerned was taken.

(10) The District Court may make such order as to costs as it considers appropriate on an appeal under *subsection (6)*.

(11) In this section—

'child' means a person who has not attained the age of 18 years;

'civil partner' has the meaning it has in section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

'cohabitant', in relation to a person, means another person who is neither married to the person nor a civil partner of the person who is living with the person as a husband or wife, or as a civil partner, of the person;

'vulnerable person' means a person, other than a child, whose capacity to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, by another person is significantly impaired through—

- (a) a physical disability, illness or injury,
- (b) a disorder of the mind, whether as a result of mental illness or dementia, or
- (c) an intellectual disability.

(12) For the purposes of this section a person shall be regarded as associated with another person if—

- (a) he or she is a spouse or a former spouse of the person,
- (b) he or she is a civil partner or a former civil partner of the person,
- (c) he or she is a cohabitant or a former cohabitant of the person,
- (d) he or she is a relative of the person, or
- (e) he or she has or has had an intimate personal relationship with the person for a significant period of time.

(13) Nothing in this section shall—

- (a) prevent or restrict the exercise of powers conferred by *section 6* or *6A*, or

(b) pending the conclusion of proceedings under this section, prevent or restrict the use of the fingerprint, palm print or photograph concerned for the purposes of—

- (i) this Act,
- (ii) a criminal investigation, or
- (iii) other proceedings.]

[Destruction of fingerprints, palm prints and photographs in exceptional circumstances

8B.— (1) Notwithstanding *sections 8* and *8A*, if the Commissioner is satisfied that exceptional circumstances exist that justify the destruction of a fingerprint, palm print or photograph of a person, the fingerprint, palm print or photograph concerned shall be destroyed as soon as practicable after the application of those circumstances in relation to that fingerprint, palm print or photograph becomes known.

(2) The exceptional circumstances referred to in *subsection (1)* are the following:

- (a) it is established, at any time after the detention of the person concerned under *section 4* for the purposes of the investigation of an offence to which that section applies during which the fingerprint, palm print or photograph concerned was taken, that no such offence was committed;
- (b) it is established that the detention of the person concerned under *section 4* for the purposes of the investigation of an offence to which that section applies during which the fingerprint, palm print or photograph concerned was taken was on the basis of the mistaken identity of the person concerned as the perpetrator of that offence; or
- (c) it is determined by a court that the detention of the person concerned under *section 4* for the purposes of the investigation of an offence to which that section applies during which the fingerprint, palm print or photograph concerned was taken was unlawful.]

[Dismissal of charges, quashing of convictions and determination of proceedings.

8C.— (1) For the purposes of *section 8*, a charge against a person in respect of an offence to which *section 4* applies 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.

(2) In *sections 8* and *8A*, references to a conviction of a person for an offence to which *section 4* applies shall be construed as including references to a conviction of the person for such an offence after a re-trial for that offence.

(3) In *section 8*, a reference to a conviction of a person for an offence to which *section 4* applies being quashed shall, subject to *subsection (4)*, be construed as a reference to where a court hearing an appeal against the conviction makes an order quashing the conviction and, if the court is the Court of Criminal Appeal, either—

- (a) it does not order the person to be re-tried for the offence concerned, or
- (b) it does not substitute for the verdict a verdict of guilty of another offence that is an offence to which *section 4* applies.

(4) A conviction of a person for an offence to which *section 4* applies shall not be regarded as quashed for the purposes of *section 8* if an appeal is contemplated, or taken, under *section 23* of the Criminal Procedure Act 2010 or, on hearing the appeal, the Supreme Court quashes the acquittal of the person or reverses the decision of the Court of Criminal Appeal, as the case may be, and orders the person to be re-tried for the offence.

(5) In *section 8A*, references to the proceedings in respect of an offence being determined shall be construed as references to where those proceedings are finally determined (including any appeal, whether by way of case stated or otherwise, rehearing or retrial).]

[Circumstances in which person to be informed of destruction of fingerprint, palm print or photograph.]

8D.— If, in relation to a fingerprint, palm print or photograph taken from or of a person under *section 6* or *6A*, the retention period under *section 8* is extended on one or more occasions under *section 8A*, the Commissioner shall, upon the expiration of that period (as so extended), cause the person from or of whom the fingerprint, palm print or photograph was taken to be informed by notice in writing as soon as may be after the fingerprint, palm print or photograph has been destroyed of its destruction.]

[Application of certain sections to Garda Síochána Ombudsman Commission.]

8E.— The references in *sections 8A, 8B, 8D* and *8H* to the Commissioner shall, for the purposes of the application of those sections to the Garda Síochána Ombudsman Commission, be construed as references to the Garda Síochána Ombudsman Commission.]

[Delegation of functions of Commissioner under certain sections.]

8F.— (1) The Commissioner may, in writing, delegate any of his or her functions under *sections 8A, 8B, 8D* and *8H* to—

- (a) members of the Garda Síochána specified by rank or name, or
- (b) members of the civilian staff of the Garda Síochána by grade, position, name or otherwise.

(2) A delegation under this section may—

- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
- (b) be made subject to conditions or restrictions, and
- (c) be revoked or varied by the Commissioner at any time.

(3) The delegation of a function under this section does not preclude the Commissioner from performing the function.

(4) Where the functions of the Commissioner under a provision of *sections 8A, 8B, 8D* and *8H* are delegated to a person, any references in that provision to the Commissioner shall be construed as references to that person.

(5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Commissioner.]

[Service of notices.]

8G.— A notice that is required to be sent or given to a person under *section 8A* or *8D* may be sent or given to the person in one of the following ways:

- (a) by delivering it to the person or his or her solicitor;
- (b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor's office;
- (c) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor's office.]

[Records.

8H.— (1) Subject to *subsection (2)*, a person who is required under *sections 8 to 8B* to destroy, or cause to be destroyed, a fingerprint, palm print or photograph shall ensure that the fingerprint, palm print or photograph, every copy thereof and every record relating to the fingerprint, palm print or photograph insofar as it identifies the person from or of whom the fingerprint, palm print or photograph has been taken, are destroyed.

(2) *Subsection (1)* shall operate in a manner that permits the Commissioner to retain such records as may be required by him or her to show that section 8D has been complied with.

(3) In this section ‘record’, in relation to a fingerprint, palm print or photograph, includes a copy of a record.]

[Application of sections 8 to 8H.

8I.— *Sections 8 to 8H* shall apply to a fingerprint, palm print or photograph of a person taken in pursuance of the powers conferred by *section 6 or 6A* whether taken before or after the commencement of this section.]

Application to persons in custody under section 30 of Offences against the State Act, 1939.

9.—[(1)] [*Sections 5, 6A, 18, 19 and 19A, subsections (8), (8A) and (8B) of section 4 and subsections (1A), (2) and (3) of section 6*] shall apply, with the necessary modifications, in relation to persons in custody under section 30 of the Act of 1939 and to the powers conferred by section 7 of the Criminal Law Act, 1976, as they apply to persons detained pursuant to *section 4* of this Act.

[(2) *Sections 8 to 8I* shall, with the following and any other necessary modifications, apply to fingerprints, palm prints and photographs, as may be appropriate, taken from or of a person pursuant to section 30 of the Act of 1939 or section 7 of the Criminal Law Act 1976 as they apply to fingerprints, palm prints and photographs taken from or of a person pursuant to *section 6 or 6A*:

- (a) references to an offence to which *section 4* applies shall be construed as references to an offence to which *section 4* applies or an offence in connection with which a person may be arrested and detained under section 30 of the Act of 1939;
- (b) references to *section 6 or 6A* shall be construed as references to section 30 of the Act of 1939 and section 7 of the Criminal Law Act 1976; and
- (c) references to the detention of the person under *section 4* shall be construed as references to the detention of the person under section 30 of the Act of 1939.]

Rearrest.

10.—[(1) Where a person arrested on suspicion of having committed an offence is detained pursuant to *section 4* and is released without any charge having been made against him, he shall not—

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

except on the authority of a warrant issued by a judge of the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that either of the following cases apply, namely:

- (i) further information has come to the knowledge of the Garda Síochána since the person’s release as to his suspected participation in the offence for which his arrest is sought, or

- (ii) notwithstanding that the Garda Síochána had knowledge, prior to the person's release, of the person's suspected participation in the offence for which his arrest is sought, the questioning of the person in relation to that offence, prior to his release, would not have been in the interests of the proper investigation of the offence.

A person arrested under that authority shall be dealt with pursuant to *section 4*.

(1A) An application for a warrant under this section shall be heard otherwise than in public.]

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

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

- (a) in connection with the first-mentioned offence, or
- (b) in connection with any other offence of which, at the time of his arrest for the first-mentioned offence, the member of the Garda Síochána by whom he was arrested suspected him or ought reasonably to have suspected him.

*Offences Committed while on Bail and other
Offences*

Offences committed while on bail: consecutive sentences.

11.—[(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.]

(2) *Subsection (1)* shall not apply where any such sentence is one of imprisonment for life or is a sentence of detention under section 103 of the Children Act, 1908.

(3) *Subsection (1)* shall apply notwithstanding anything contained in section 5 of the Criminal Justice Act, 1951.

[(4) Where a court—

- (a) is determining the sentence to be imposed on a person for an offence committed while he or she was on bail,

and

- (b) is required by *subsection (1)* to impose two or more consecutive sentences,

then, the fact that the offence was committed while the person was on bail shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the sentence for the previous offence is one of imprisonment for life or where the court considers that there are exceptional circumstances justifying its not doing so) impose a sentence that is greater than that which would have been imposed in the absence of such a factor.]

Increase of aggregate term of imprisonment in certain cases.

12.—(1) Section 5 of the Criminal Justice Act, 1951 (which provides that, where two or more sentences passed by the District Court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed twelve months) is hereby amended by the substitution, for “twelve months”, of “two years”. In that section “imprisonment” shall include detention in Saint Patrick’s Institution.

(2) Section 13(1) of the Criminal Law Act, 1976 (which provides for consecutive sentences in the case of an offence committed by a person while he is serving a sentence) is hereby amended by the substitution, for “twelve months”, of “two years”.

Failure to surrender to bail.

13.—(1) If a person who has been released on bail in criminal proceedings fails to appear before a court in accordance with his recognisance, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [€5,000] or to imprisonment for a term not exceeding twelve months or to both.

(2) It shall be a defence in any proceedings for an offence under *subsection (1)* for the accused to show that he had a reasonable excuse for not so appearing.

(3) For the purpose of *section 11* an offence under this section shall be treated as an offence committed while on bail.

(4) Where a person has failed to appear before a court in answer to his bail and the court has directed that a warrant be issued for the arrest of that person by reason of his failure to answer his bail, a member of the Garda Síochána may arrest such a person notwithstanding that he does not have the warrant in his possession at the time of the arrest.

(5) Where a person is arrested pursuant to *subsection (4)* the member arresting him shall as soon as practicable produce and serve on the said person the said warrant.

[(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.]

Increase of penalties for certain firearms offences.

14.—(1) Section 15 of the Firearms Act, 1925, as amended by section 21 (4) of the Criminal Law (Jurisdiction) Act, 1976 (possessing firearm or ammunition with intent to endanger life or cause serious injury to property) is hereby amended by the substitution, for “imprisonment for a term not exceeding fourteen years”, of “imprisonment for life”.

(2) Section 26 (1) of the Firearms Act, 1964, as amended by section 21 (6) (b) of the Criminal Law (Jurisdiction) Act, 1976 (possession of firearm while taking vehicle without authority) is hereby amended by the substitution, for “seven years”, of “fourteen years”.

(3) Section 27 (2) of the Firearms Act, 1964, as amended by section 21 (6) (c) of the Criminal Law (Jurisdiction) Act, 1976 (use of firearm to resist arrest or aid escape) is hereby amended by the substitution, for “imprisonment for a term not exceeding fourteen years”, of “imprisonment for life”.

(4) Section 27A (1) of the Firearms Act, 1964, inserted by section 8 of the Criminal Law (Jurisdiction) Act, 1976 (possession of firearm or ammunition in suspicious circumstances) is hereby amended by the substitution, for “five years”, of “ten years”.

(5) Section 27B (1) of the Firearms Act, 1964, inserted by section 9 of the Criminal Law (Jurisdiction) Act, 1976 (carrying firearm with criminal intent) is hereby amended by the substitution, for “ten years”, of “fourteen years”.

Withholding information regarding firearms or ammunition.

15.—(1) Where a member of the Garda Síochána—

- (a) finds a person in possession of any firearm or ammunition,
- (b) has reasonable grounds for believing that the person is in possession of the firearm or ammunition in contravention of the criminal law, and
- (c) informs that person of his belief,

he may require that person to give him any information which is in his possession, or which he can obtain by taking reasonable steps, as to how he came by the firearm or ammunition and as to any previous dealings with it, whether by himself or by any other person.

(2) If that person fails or refuses, without reasonable excuse, to give the information or gives information that he knows to be false or misleading, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [€5,000] or to imprisonment for a term not exceeding twelve months or to both.

(3) *Subsection (2)* shall not have effect unless the accused when required to give the information was told in ordinary language by the member of the Garda Síochána what the effect of his failure or refusal might be.

(4) Any information given by a person in compliance with a requirement under *subsection (1)* shall not be admissible in evidence against that person or his spouse in any proceedings, civil or criminal, other than proceedings for an offence under *subsection (2)*.

Withholding information regarding stolen property, etc.

16.—[...]

Maximum fine on summary conviction of certain indictable offences.

17.—Section 4 (1) of the Criminal Justice Act, 1951, and section 13 (3) (a) of the Criminal Procedure Act, 1967 (each of which provides for a maximum fine of £100 on summary conviction of certain indictable offences) are hereby amended by the substitution, in each of those provisions, of “£1,000” for “£100”.

Inferences from Accused's Failure to Account for Certain Matters

Inferences from failure, 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.]

Inferences from accused's presence at a particular place.

[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 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.]

[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.]

Trial Procedure

Notice of alibi in trials on indictment.

20.—(1) On a trial on indictment for an offence committed after the commencement of this section the accused shall not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to *subsection (1)*, on any such trial the accused shall not without the leave of the court call any other person (in this section referred to as the witness) to give such evidence unless—

- (a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the accused at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness,
- (b) if the name or the address is not included in that notice, the court is satisfied that the accused, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained,
- (c) if the name or the address is not included in that notice, but the accused subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he gives notice forthwith of the name, address or other information, as the case may be, and
- (d) if the accused is notified by or on behalf of the prosecution that the witness has not been traced by the name or at the address given, he gives notice forthwith of any such information which is then in his possession or, on subsequently receiving any such information, gives notice of it forthwith.

(3) The court shall not refuse leave under this section if it appears to the court that the accused was not informed of the requirements of this section—

- (a) by the District Court when he was sent forward for trial, or
- (b) by the trial court when, on being sent forward by the District Court for sentence, he changed his plea to one of not guilty, or
- (c) where he was brought before a Special Criminal Court for trial under section 47 of the Act of 1939, by the Court when it fixed the date of trial.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused by his solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

[(6) A notice under *subsection (1)* or under *paragraph (c)* or *(d)* of *subsection (2)* shall be given in writing to the solicitor for the prosecution.]

(7) A notice required by this section to be given to the solicitor for the prosecution may be given by delivering it to him or by leaving it at his office or by sending it to him by registered post at his office.

(8) In this section—

“evidence in support of an alibi” means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

“the prescribed period” means—

[(a) the period of fourteen days after the date the accused is, in accordance with section 4B(1) of the Criminal Procedure Act, 1967, served with the documents referred to in that section, or]

(b) [...]

[(c) where the accused, on being sent forward for sentence, changes his plea to not guilty, the period of fourteen days after the accused is, in accordance with section 13(4)(b) of the Criminal Procedure Act, 1967, served with the documents referred to in section 4B(1) of that Act, or]

(d) where the accused is brought before a Special Criminal Court for trial under section 47 of the Act of 1939, such period as is fixed by the Court when the Court fixes the date of trial.

Proof by written statement.

21.—(1) In any proceedings against a person for an offence [, other than the hearing of an application under Part IA of the Criminal Procedure Act, 1967, for the dismissal of a charge,] a written statement by any person shall, if such of the conditions mentioned in *subsection (2)* as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The said conditions are:

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he stated in it anything which he knew to be false or did not believe to be true;

(c) a copy of the statement is served, by or on behalf of the party proposing to tender it in evidence, on each of the other parties to the proceedings; and

(d) none of the other parties or their solicitors, within twenty-one days from the service of the copy of the statement, serves on the party so proposing a notice objecting to the statement being tendered in evidence under this section.

(3) The conditions mentioned in *paragraphs (c) and (d) of subsection (2)* shall not apply if the parties agree at the hearing or the parties or their solicitors agree before the hearing that the statement shall be so tendered.

(4) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section:

(a) if the statement is made by a person under the age of twenty-one years, it shall give his age;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

(c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under *subsection (2) (c)* shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(5) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence, and

(b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(6) An application under *subsection (5) (b)* may be made before the hearing in a case in which the proceedings are in the Central Criminal Court, the Circuit Court or the Special Criminal Court and, for this purpose, the powers of the Central Criminal Court shall be exercisable by any judge of the High Court and the powers of the Circuit Court shall be exercisable by any judge of that court.

(7) So much of any statement as is admitted as evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing.

(8) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(9) A document required by this section to be served on any person may, subject to *subsection (10)*, be served—

(a) by delivering it to him or to his solicitor,

(b) by addressing it to him and leaving it at his usual or last known residence or place of business or by addressing it to his solicitor and leaving it at the solicitor's office,

(c) by sending it by registered post to him at his usual or last known residence or place of business or to his solicitor at the solicitor's office, or

(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by registered post to the secretary or clerk of that body at that office.

(10) A document required by this section to be served on an accused shall, if the accused is not represented by a solicitor, be served personally on the accused.

(11) Where—

(a) a statement is tendered in evidence by virtue of this section, and

(b) the person by whom the statement was made has stated in it anything which he knew to be false or did not believe to be true,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding twelve months or to both, or on conviction on indictment to a fine not exceeding £2,000 or to imprisonment for a term not exceeding five years or to both.

(12) This section shall also apply to a written statement made outside the State with the omission from *subsection (2) (b)* of the words from "and that he made the statement" to the end of the paragraph, and the omission of *subsection (11)*.

Proof by formal admission.

22.—(1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecution or the accused, and the admission by any party of any such fact under this section shall be against that party be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section—

(a) may be made before or at the hearing,

- (b) if made otherwise than in court, shall be in writing,
- (c) if made in writing by an individual, shall be signed by the person making it and, if so made by a body corporate, shall be signed by a director or manager, or the secretary or clerk or some other similar officer of the body corporate,
- (d) if made on behalf of an accused who is an individual, shall be made by his counsel or solicitor,
- (e) if made at any stage before the hearing by an accused who is an individual, must be approved by his counsel or solicitor either at the time it was made or subsequently,

and any signature referred to in *paragraph (c)* shall be taken to be that of the person whose signature it appears to be unless the contrary is shown.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or retrial).

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

Abolition of right of accused to make unsworn statement.

23.—(1) In any proceedings against a person for an offence the accused shall not be entitled to make a statement without being sworn and, accordingly, if he gives evidence, he shall do so on oath and be liable to cross-examination, but this shall not—

- (a) affect the right of the accused, if not represented by counsel or a solicitor, to address the court or jury otherwise than on oath on any matter on which, if he were so represented, his counsel or solicitor could address the court or jury on his behalf,
- (b) affect any trial, or the preliminary examination of any indictable offence, commenced before the commencement of this section.

(2) Nothing in *subsection (1)* shall prevent the accused from making a statement without being sworn—

- (a) if it is one which he is required by law to make personally, or
- (b) if he makes it by way of mitigation before the court passes sentence upon him.

(3) The following provisions are hereby repealed:

- (a) paragraph (h) of the proviso to section 1 of the Criminal Justice (Evidence) Act, 1924, and
- (b) section 7 (4) of the Criminal Procedure Act, 1967, and, in section 8 (2) of that Act, the words from “proceed in accordance with” to “paragraph (a),”.

Order of closing speeches.

24.—(1) Notwithstanding any rule of law or practice, and notwithstanding anything contained in section 2 of the Criminal Procedure Act, 1865, the procedure at a trial on indictment as to the closing speeches for the prosecution and for the defence shall be as follows:

- (a) the prosecution shall have the right to a closing speech in all cases except where the accused is not represented by counsel or a solicitor and does not call any witness (other than a witness to character only), and the defence shall have the right to a closing speech in all cases, and

(b) the closing speech for the defence shall be made after that for the prosecution.

(2) Section 3 of the Criminal Justice (Evidence) Act, 1924, is hereby repealed.

Majority verdicts. **25.**—(1) The verdict of a jury in criminal proceedings need not be unanimous in a case where there are not fewer than eleven jurors if ten of them agree on the verdict.

(2) The court shall not accept a verdict of guilty unless the foreman of the jury has stated in open court whether the verdict is unanimous or is by a majority in accordance with *subsection (1)* and, in the latter event, the number of jurors who agreed to the verdict.

(3) The court shall not accept a verdict by virtue of *subsection (1)* unless it appears to the court that the jury have had such period of time for deliberation as the court thinks reasonable having regard to the nature and complexity of the case; and the court shall not in any event accept such a verdict unless it appears to the court that the jury have had at least two hours for deliberation.

(4) The court shall cause the verdict of the jury to be taken in such a way that, where the verdict is one of not guilty, it shall not be indicated whether the verdict was unanimous or by a majority.

(5) This section shall not affect the trial of any offence for which the court is required, upon the conviction of the accused, to sentence him to death or any trial commenced before the commencement of this section.

Miscellaneous

Proceedings after arrest. **26.**—The following section shall be substituted for section 15 of the Criminal Justice Act, 1951:

“15.—(1) A person arrested pursuant to a warrant shall on arrest be brought before a justice of the District Court having jurisdiction to deal with the offence concerned or, if a justice is not immediately available, before a peace commissioner in the district of such a justice as soon as practicable.

(2) A person arrested without warrant shall, on being charged with an offence, be brought before a justice of the District Court having jurisdiction to deal with the offence or, if a justice is not immediately available, before a peace commissioner in the district of such a justice as soon as practicable.

(3) Where a person is arrested pursuant to a warrant later than the hour of 10 o'clock on any evening or, having been arrested without warrant, is charged after that hour and a justice is due to sit in the District Court district in which the person was arrested not later than noon on the following day, it shall be sufficient compliance with *subsection (1)* or *(2)*, as the case may be, if he is brought before a justice at the commencement of the sitting.

(4) If the person is brought before a peace commissioner, the commissioner, having heard the evidence offered, shall remand him, either in custody or on such bail as the commissioner thinks fit, and remit the case for hearing before a justice of the District Court having jurisdiction to deal with it.

(5) If the accused is remanded on bail and there and then finds bail, the case shall be remitted to the next sitting of the court.

(6) In any other event, the case shall be remitted to a sitting of the court at a named place to be held within eight days after the arrest.

(7) This section is without prejudice to the provisions of any enactment relating to proceedings after arrest or charge in particular cases.”

Electronic recording of questioning.

27.—(1) The Minister for Justice may by regulations provide for the recording by electronic or other similar means of the questioning of persons by members of the Garda Síochána at Garda Síochána stations or elsewhere in connection with the investigation of offences.

(2) The regulations may be made so as to apply generally or to questioning at such places, to such extent, in relation to such offences or in such circumstances, as may be prescribed therein.

(3) The regulations shall include provision for the preservation, for such time and in such manner as may be prescribed therein, of every recording made in accordance with the regulations.

(4) Any failure to comply with a provision of the regulations shall not by itself render a person liable to civil or criminal proceedings, and (without prejudice to the power of the court to exclude evidence at its discretion) shall not by itself render inadmissible in evidence anything said during such questioning.

[Taking of fingerprints, palmprints or photographs of person dealt with under Probation of Offenders Act, 1907, or convicted.

28.—(1) Where a person, on being prosecuted for an indictable offence, is the subject of an order under subsection (1) or (2) of section 1 of the Probation of Offenders Act, 1907, or is convicted and otherwise dealt with, a member of the Garda Síochána may—

(a) at any convenient place, take the fingerprints, palmprints or photograph of that person, within 7 days of the making of such order or his being convicted, or

(b) require, in writing, that person to attend, within 7 days of the making of such order or his being convicted, at a named Garda Síochána station for the purpose of having his fingerprints, palmprints or photograph taken:

Provided that where a person has made it impracticable for his fingerprints, palmprints or photograph to be taken within the said period of 7 days, a member of the Garda Síochána may require (or in the case of a person attending a Garda Síochána station pursuant to a requirement under this section, further require) in writing, that person to attend at a named Garda Síochána station on a specified day for the purpose of having his fingerprints, palmprints or photograph taken.

A member of the Garda Síochána may take the fingerprints, palmprints or photograph of a person on his attendance at a Garda Síochána station pursuant to a requirement under this section.

[(3) Sections 8 to 8I shall, with the following and any other necessary modifications, apply to fingerprints, palm prints or photographs taken from or of a person pursuant to this section as they apply to fingerprints, palm prints or photographs taken from or of a person pursuant to section 6 or 6A:

(a) references to an offence to which section 4 applies shall be construed as references to an indictable offence;

(b) references to section 6 or 6A shall be construed as references to this section; and

(c) references to the detention of the person under section 4 shall be construed as references to the person being at a place, or attending at a Garda Síochána station, for the purpose of having his or her fingerprints, palm prints or photograph taken by a member of the Garda Síochána.]

(4) Any person who refuses to comply with a requirement under this section or to allow his fingerprints, palmprints or photograph to be taken pursuant to this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [€3,000] or to imprisonment for a term not exceeding 12 months or to both.]

Application of Act to courts-martial. **29.**—The provisions of this Act relating to criminal proceedings shall not apply in relation to a trial by court-martial except so far as any such provision is so applied by regulations made by the Minister for Defence, with such modifications, if any, as may be prescribed by the regulations.

Laying of regulations before Houses of Oireachtas. **30.**—Every regulation made under this Act (other than a regulation under *section 7*) shall be laid before each House of the Oireachtas as soon as may be after such regulation is made and, if a resolution annulling such regulation is passed by either House of the Oireachtas within the next subsequent twenty-one days on which that House has sat after such regulation has been laid before it, such regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under such regulation.

Expenses. **31.**—The expenses incurred by the Minister for Justice 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.

Short title. **32.**—This Act may be cited as the Criminal Justice Act, 1984.