



Number 19 of 2009

CRIMINAL JUSTICE (SURVEILLANCE) ACT 2009

REVISED

Updated to 6 February 2017

This Revised Act is an administrative consolidation of the *Criminal Justice (Surveillance) Act 2009*. 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 *Health (Miscellaneous Provisions) Act 2017 (1/2017)*, enacted 16 February 2017, and all statutory instruments up to and including *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Garda Síochána Ombudsman Commission) Regulations 2017 (S.I. No. 46 of 2017)*, made 6 February 2017, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act 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

Criminal Justice (Surveillance) Acts 2009 and 2015: this Act is one of a group of Acts included in this collective citation (*Garda Síochána (Amendment) Act 2015*, s. 1(3)). The Acts in the group are:

- *Criminal Justice (Surveillance) Act 2009* (19/2009)
- *Garda Síochána (Amendment) Act 2015* (3/2015)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1997, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Garda Síochána (Amendment) Act 2015 (3/2015)*

All Acts up to and including *Health (Miscellaneous Provisions) Act 2017 (1/2017)*, enacted 16 February 2017, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Garda Síochána Ombudsman Commission) Regulations 2017 (S. I. No. 46 of 2017)*
- *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Defence Forces) Regulations 2010 (S. I. No. 80 of 2010)*
- *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Revenue Commissioners) Regulations 2009 (S.I. No. 290 of 2009)*
- *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (An Garda Síochána) Regulations 2009 (S.I. No. 275 of 2009)*

All statutory instruments up to and including *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Garda Síochána Ombudsman Commission) Regulations 2017 (S.I. No. 46 of 2017)*, made 6 February 2017, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Application of Act.
3. Surveillance.
4. Application for authorisation.
5. Authorisation.
6. Variation or renewal of authorisation.
7. Approval for surveillance in cases of urgency.
8. Tracking devices.
9. Retention of materials relating to applications and reports.
10. Restriction of disclosure of existence of authorisations and other documents.
11. Complaints procedure.
12. Review of operation of this Act by designated judge.
13. Confidentiality of information.
14. Admissibility of evidence.
15. Disclosure of information.
16. Regulations.
17. Amendment of Garda Síochána Act 2005.
18. Amendment of Courts (Supplemental Provisions) Act 1961.
19. Short title.

ACTS REFERRED TO

Courts (Supplemental Provisions) Act 1961	1961, No. 39
Criminal Justice Act 1984	1984, No. 22
Criminal Justice Act 2006	2006, No. 26
Criminal Justice (Terrorist Offences) Act 2005	2005, No. 2
Criminal Law Act 1997	1997, No. 14
Customs Consolidation Act 1876	39 & 40, Vict. Ch. 36
Defence (Amendment) Act 1979	1979, No. 1
Defence (Amendment) Act 1990	1990, No. 6
Defence Act 1954	1954, No. 18
Finance Act 1999	1999, No. 2
Finance Act 2001	2001, No. 7
Finance Act 2003	2003, No. 3
Finance Act 2005	2005, No. 5
Garda Síochána Act 2005	2005, No. 20
Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993	1993, No. 10
Postal and Telecommunications Services Act 1983	1983, No. 24
Taxes Consolidation Act 1997	1997, No. 39



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CRIMINAL JUSTICE (SURVEILLANCE) ACT 2009

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AN ACT TO PROVIDE FOR SURVEILLANCE IN CONNECTION WITH THE INVESTIGATION OF ARRESTABLE OFFENCES, THE PREVENTION OF SUSPECTED ARRESTABLE OFFENCES AND THE SAFEGUARDING OF THE STATE AGAINST SUBVERSIVE AND TERRORIST THREATS, TO AMEND THE GARDA SÍOCHÁNA ACT 2005 AND THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961 AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[12th July, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Editorial Notes:

- E1** Record held or created by the Gardaí under Act excluded from application of *Freedom of Information Act 2014* (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 42(b)(ix), commenced on enactment subject to s. 1(3).

Interpretation.

1.— In this Act—

“Act of 1993” means the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;

“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;

“authorisation” means an authorisation for the carrying out of surveillance issued under *section 5* or varied or renewed under *section 6*;

F1[‘chairperson’, in relation to the Ombudsman Commission, means the member of the Ombudsman Commission who is appointed or acting as its chairperson under section 65 of the Garda Síochána Act 2005;

‘designated officer of the Ombudsman Commission’ means—

(a) an officer of the Ombudsman Commission, or

(b) a person engaged by the Ombudsman Commission under section 74 of the Garda Síochána Act 2005,

who is designated by the Ombudsman Commission under section 73 of that Act for the purpose of performing functions under any provisions of Part 4 of that Act;]

“document” includes—

- (a) any book, record or other written or printed material in any form, and
- (b) any recording, including any data or information stored, maintained or preserved electronically or otherwise than in legible form;

“judge” means a judge of the District Court;

“member of the Defence Forces” means a member of the Defence Forces within the meaning of section 1 of the Defence (Amendment) Act 1990, other than a member of the Reserve Defence Force within the meaning of the Defence Act 1954;

“member of the Garda Síochána” means a member of the Garda Síochána within the meaning of section 3 of the Garda Síochána Act 2005, other than a person referred to in paragraph (b) of that definition;

F1[‘member of the Ombudsman Commission’ means a member of the Ombudsman Commission appointed under section 65 of the Garda Síochána Act 2005;]

“Minister” means the Minister for Justice, Equality and Law Reform;

F1[‘Ombudsman Commission’ means the Garda Síochána Ombudsman Commission;]

“place” includes—

- (a) a dwelling or other building,
- (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;

“relevant Minister” means—

F2[(a) the Minister—

- (i) in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Garda Síochána, and
- (ii) in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Ombudsman Commission,]
- (b) the Minister for Defence, in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Defence Forces, and
- (c) the Minister for Finance, in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Revenue Commissioners;

“revenue offence” means an offence under any of the following provisions that is an arrestable offence:

- (a) section 186 of the Customs Consolidation Act 1876;
- (b) section 1078 of the Taxes Consolidation Act 1997;
- (c) section 102 of the Finance Act 1999;

(d) section 119 of the Finance Act 2001;

(e) section 79 (inserted by section 62 of the Finance Act 2005) of the Finance Act 2003;

(f) section 78 of the Finance Act 2005;

“superior officer” means—

(a) in the case of the Garda Síochána, a member of the Garda Síochána not below the rank of superintendent;

F1[(aa) in the case of the Ombudsman Commission, a member of the Ombudsman Commission other than its chairperson;]

(b) in the case of the Defence Forces, a member of the Defence Forces not below the rank of colonel; and

(c) in the case of the Revenue Commissioners, an officer of the Revenue Commissioners not below the rank of principal officer;

“surveillance” means—

(a) monitoring, observing, listening to or making a recording of a particular person or group of persons or their movements, activities and communications, or

(b) monitoring or making a recording of places or things,

by or with the assistance of surveillance devices;

“surveillance device” means an apparatus designed or adapted for use in surveillance, but does not include—

(a) an apparatus designed to enhance visual acuity or night vision, to the extent to which it is not used to make a recording of any person who, or any place or thing that, is being monitored or observed,

(b) a CCTV within the meaning of section 38 of the Garda Síochána Act 2005, or

(c) a camera, to the extent to which it is used to take photographs of any person who, or any thing that, is in a place to which the public have access;

“tracking device” means a surveillance device that is used only for the purpose of providing information regarding the location of a person, vehicle or thing;

“written record of approval” means a written record of approval prepared by a superior officer under *section 7 (6) or 8 (6)*.

Annotations

Amendments:

F1 Inserted (27.04.2015) by *Garda Sochána (Amendment) Act 2015 (3/2015)*, s. 13(a)(ii), (iii), S.I. No. 150 of 2015.

F2 Substituted (27.04.2015) by *Garda Sochána (Amendment) Act 2015 (3/2015)*, s. 13(a)(i), S.I. No. 150 of 2015.

Application of Act.

2.— (1) This Act applies to surveillance carried out by members of the Garda Síochána, F3[designated officers of the Ombudsman Commission,] members of the Defence Forces and officers of the Revenue Commissioners.

(2) Nothing in this Act shall render unlawful any activity that would otherwise be lawful.

(3) An authorisation or approval under this Act may not be issued or granted in respect of an activity that would constitute an interception within the meaning of the Act of 1993.

(4) For the avoidance of doubt, it is hereby declared that this Act does not apply to the following:

- (a) the use of a closed circuit television system in a Garda Síochána station;
- (b) the recording by electronic or other similar means under section 27 of the Criminal Justice Act 1984 of the questioning of a person by members of the Garda Síochána F3[or designated officers of the Ombudsman Commission] at Garda Síochána stations or elsewhere in connection with the investigation of offences;
- (c) the recording by electronic or other similar means of any evidence given, or statement made, by a person for the purposes of any court proceedings.

Annotations

Amendments:

F3 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(b), S.I. No. 150 of 2015.

Surveillance. **3.**— A member of the Garda Síochána, F4[a designated officer of the Ombudsman Commission,] a member of the Defence Forces or an officer of the Revenue Commissioners shall carry out surveillance only in accordance with a valid authorisation or an approval granted in accordance with *section 7* or *8*.

Annotations

Amendments:

F4 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(c), S.I. No. 150 of 2015.

Application for authorisation. **4.**— (1) A superior officer of the Garda Síochána may apply to a judge for an authorisation where he or she has reasonable grounds for believing that—

- (a) as part of an operation or investigation being conducted by the Garda Síochána concerning an arrestable offence, the surveillance being sought to be authorised is necessary for the purposes of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purposes of proceedings in relation to the offence,
- (b) the surveillance being sought to be authorised is necessary for the purpose of preventing the commission of arrestable offences, or
- (c) the surveillance being sought to be authorised is necessary for the purpose of maintaining the security of the State.

F5[(1A) A superior officer of the Ombudsman Commission may apply to a judge for an authorisation where he or she has reasonable grounds for believing that as part

of an investigation being conducted by the Ombudsman Commission concerning an arrestable offence, the surveillance being sought to be authorised is necessary for the purposes of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purposes of proceedings in relation to the offence.]

(2) A superior officer of the Defence Forces may apply to a judge for an authorisation where he or she has reasonable grounds for believing that the surveillance being sought to be authorised is necessary for the purpose of maintaining the security of the State.

(3) A superior officer of the Revenue Commissioners may apply to a judge for an authorisation where he or she has reasonable grounds for believing that—

(a) as part of an operation or investigation being conducted by the Revenue Commissioners concerning a revenue offence, the surveillance being sought to be authorised is necessary for the purpose of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purpose of proceedings in relation to the offence, or

(b) the surveillance being sought to be authorised is necessary for the purpose of preventing the commission of revenue offences.

(4) In a case in which surveillance carried out under *section 7* is sought under *subsection (10)* of that section to be continued by application under this section, the information on oath supporting the application shall include a copy of the written record of approval concerned, a summary of the results of the surveillance carried out and the reasons why continued surveillance is required.

(5) A superior officer who makes an application under F6[*subsection (1), (1A), (2), (3) or (4)*] shall also have reasonable grounds for believing that the surveillance being sought to be authorised is—

(a) the least intrusive means available, having regard to its objectives and other relevant considerations,

(b) proportionate to its objectives, having regard to all the circumstances including its likely impact on the rights of any person, and

(c) of a duration that is reasonably required to achieve its objectives.

Annotations

Amendments:

F5 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015 (3/2015)*, s. 13(d)(i), S.I. No. 150 of 2015.

F6 Substituted (27.04.2015) by *Garda Síochána (Amendment) Act 2015 (3/2015)*, s. 13(d)(ii), S.I. No. 150 of 2015.

Authorisation. **5.—** (1) An application under *section 4* for an authorisation and under *section 6* for a variation or renewal of an authorisation—

(a) shall be made *ex parte* and shall be heard otherwise than in public, and

(b) may be made to a judge assigned to any district court district.

(2) Subject to *subsection (4)*, the judge shall issue such authorisation as he or she considers reasonable, if satisfied by information on oath of the superior officer concerned that—

(a) F7[the requirements specified in subsection (1), (1A), (2) or (3), as the case may be, of section 4] are fulfilled, and

(b) to do so is justified, having regard to the matters referred to in section 4 (5) and all other relevant circumstances.

(3) An information on oath of a superior officer specifying the grounds for his or her belief that the surveillance is necessary for the purpose of preventing the commission of arrestable offences referred to in section 4 (1) (b), or the commission of revenue offences referred to in section 4 (3) (b), need not specify a particular arrestable offence or a particular revenue offence, as the case may be, in respect of which the authorisation is being sought.

(4) The judge shall not issue an authorisation if he or she is satisfied that the surveillance being sought to be authorised is likely to relate primarily to communications protected by privilege.

(5) An authorisation may impose such conditions in respect of the surveillance authorised as the judge considers appropriate.

(6) An authorisation shall be in writing and shall specify—

(a) particulars of the surveillance device that is authorised to be used,

(b) the person who, or the place or thing that, is to be the subject of the surveillance,

(c) the name of the superior officer to whom it is issued,

(d) the conditions (if any) subject to which the authorisation is issued, and

(e) the date of expiry of the authorisation.

(7) An authorisation may authorise the superior officer named in it, or any member of the Garda Síochána, F8[any designated officer of the Ombudsman Commission,] any member of the Defence Forces or any officer of the Revenue Commissioners designated by that superior officer, accompanied by any other person whom he or she considers necessary, to enter, if necessary by the use of reasonable force, any place for the purposes of initiating or carrying out the authorised surveillance, and withdrawing the authorised surveillance device, without the consent of a person who owns or is in charge of the place.

(8) An authorisation shall expire on the day fixed by the judge that he or she considers reasonable in the circumstances and that is not later than 3 months from the day on which it is issued.

(9) Subject to any conditions imposed by the judge under subsection (5), an authorisation shall have effect both within the district court district to which the judge is assigned and in any other part of the State.

Annotations

Amendments:

F7 Substituted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(e)(i), S.I. No. 150 of 2015.

F8 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(e)(ii), S.I. No. 150 of 2015.

Variation or renewal of authorisation.

6.— (1) A judge may, on application in that behalf by the superior officer to whom an authorisation was issued, if satisfied by information on oath of that superior officer justifying the variation or renewal of the authorisation—

(a) vary the authorisation, or

(b) renew the authorisation, on the same or different conditions, for such further period, not exceeding 3 months, as the judge considers appropriate.

(2) An application for a renewal under this section shall be made before the authorisation concerned, or any previous renewal of that authorisation, as the case may be, has expired.

(3) Where an application for a renewal under this section has been made and the authorisation concerned would, but for this subsection, expire during the hearing of the application, it shall be deemed not to expire until the determination of the application.

Approval for surveillance in cases of urgency.

7.— (1) A member of the Garda Síochána, F9[a designated officer of the Ombudsman Commission,] a member of the Defence Forces or an officer of the Revenue Commissioners may carry out surveillance without an authorisation if the surveillance has been approved by a superior officer in accordance with this section.

(2) A member or officer referred to in *subsection (1)* may apply to a superior officer for the grant of an approval to carry out surveillance if he or she believes on reasonable grounds that F10[the requirements of *subsection (1), (1A), (2) or (3), as the case may be, of section 4*] are fulfilled and that the surveillance is justified having regard to the matters referred to in *section 4(5)*, but that, before an authorisation could be issued—

(a) it is likely that a person would abscond for the purpose of avoiding justice, obstruct the course of justice or commit an arrestable offence or a revenue offence, as the case may be,

(b) information or evidence in relation to the commission of an arrestable offence or a revenue offence, as the case may be, is likely to be destroyed, lost or otherwise become unavailable, or

(c) the security of the State would be likely to be compromised.

(3) A superior officer to whom an application under *subsection (2)* is made shall approve the carrying out of such surveillance as he or she considers appropriate, having regard to the information in the application, if he or she is satisfied that there are reasonable grounds for believing that an authorisation would be issued under *section 5* but that one or more of the conditions of urgency specified in *subsection (2)* apply.

(4) An approval may be granted subject to conditions, including as to the duration of the surveillance.

(5) An approval under this section permits the member or officer concerned, accompanied by any other person whom he or she considers necessary, to enter, if necessary by the use of reasonable force, any place for the purposes of initiating or carrying out the approved surveillance, and withdrawing the approved surveillance device, without the consent of a person who owns or is in charge of the place.

(6) A superior officer who approves the carrying out of surveillance under this section shall, as soon as practicable and, in any case, not later than 8 hours after the surveillance has been approved, prepare a written record of approval of that surveillance.

(7) A written record of approval shall be in such form as the relevant Minister may prescribe by regulations and shall include—

- (a) particulars of the surveillance device that is approved to be used,
- (b) the person who, or the place or thing that, is to be the subject of the surveillance,
- (c) the name of the member of the Garda Síochána, F9[designated officer of the Ombudsman Commission,] member of the Defence Forces or officer of the Revenue Commissioners to whom the approval is granted,
- (d) the conditions (if any) subject to which the approval is granted,
- (e) the time at which the approval is granted, and
- (f) the duration of the approved surveillance.

(8) The member or officer shall not carry out surveillance under this section for a period of more than 72 hours from the time at which the approval is granted.

(9) The superior officer who approved the carrying out of surveillance may vary that approval, or any condition attached to it, at any time before the expiry of the period of 72 hours.

(10) (a) If the superior officer who approved the carrying out of surveillance believes on reasonable grounds that surveillance beyond the period of 72 hours is warranted, he or she shall, as soon as possible but in any case before the expiry of that period, make an application under *section 4(4)* for an authorisation to continue the surveillance.

(b) Where an application under *section 4(4)* has been made and the period referred to in *paragraph (a)* would, but for this paragraph, expire during the hearing of the application, it shall be deemed not to expire until the determination of the application.

(11) A superior officer who approves the carrying out of surveillance under this section shall make a report as soon as possible and, in any case, not later than 7 days after the surveillance concerned has been completed, specifying the grounds on which the approval was granted, and including a copy of the written record of approval and a summary of the results of the surveillance.

(12) A report under *subsection (11)* shall be made to—

(a) in the case of a member of the Garda Síochána, a member of the Garda Síochána of the rank of Assistant Commissioner,

F9[(aa) in the case of a designated officer of the Ombudsman Commission, the chairperson of the Ombudsman Commission,]

(b) in the case of an officer of the Defence Forces, a general officer within the meaning of *section 2* (as amended by *section 2(b)* of the Defence (Amendment) Act 1979) of the Defence Act 1954, and

(c) in the case of an officer of the Revenue Commissioners, an officer of the Revenue Commissioners of the rank of Assistant Secretary.

Annotations

Amendments:

- F9 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(f)(i), (iii), (iv), S.I. No. 150 of 2015.

F10 Substituted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(f)(ii), S.I. No. 150 of 2015.

Editorial Notes:

E2 Power pursuant to subs. (7) exercised (6.02.2017) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Garda Síochána Ombudsman Commission) Regulations 2017* (S.I. No. 46 of 2017).

E3 Power pursuant to subs. (7) exercised (17.02.2010) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Defence Forces) Regulations 2010* (S.I. No. 80 of 2010).

E4 Form of written record of approval for purposes of section prescribed (27.07.2009) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Revenue Commissioners) Regulations 2009* (S.I. No. 290 of 2009), reg. 3 and sch.

E5 Form of written record of approval for purposes of section prescribed (20.07.2009) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (An Garda Síochána) Regulations 2009* (S.I. No. 275 of 2009), reg. 3 and sch.

Tracking devices. **8.**— (1) Notwithstanding *sections 4 to 7*, a member of the Garda Síochána, F11[a designated officer of the Ombudsman Commission,]a member of the Defence Forces or an officer of the Revenue Commissioners may, for a period of not more than 4 months or such shorter period as the Minister may prescribe by regulations, monitor the movements of persons, vehicles or things using a tracking device if that use has been approved by a superior officer in accordance with this section.

(2) A member or officer referred to in *subsection (1)* may apply to a superior officer for the grant of an approval to use a tracking device if he or she believes on reasonable grounds that—

(a) F12[the requirements of *subsection (1), (1A), (2) or (3), as the case may be, of section 4*] are fulfilled and that surveillance is justified having regard to the matters referred to in *paragraphs (b) and (c) of section 4(5)*, but that the use of a tracking device would be sufficient for obtaining the information or evidence in the circumstances concerned, and

(b) the information or evidence sought could reasonably be obtained by the use of a tracking device for a specified period that is as short as is practicable to allow the information or evidence to be obtained.

(3) A superior officer to whom an application under *subsection (2)* is made shall approve such use of a tracking device as he or she considers appropriate, having regard to the information in the application, if he or she is satisfied that there are reasonable grounds for believing that an authorisation would be issued under *section 5* and that the conditions specified in *subsection (2)* apply.

(4) An approval may be granted subject to conditions, including as to the duration of the use of the tracking device.

(5) An approval under this section permits the member or officer concerned, accompanied by any other person whom he or she considers necessary, to place the tracking device and remove it at the end of its use, without the consent of a person who owns or is in charge of the vehicle or thing on which it is placed.

(6) A superior officer who approves the use of a tracking device under this section shall, as soon as practicable and, in any case, not later than 8 hours after the use has been approved, prepare a written record of approval of the use of the tracking device.

(7) A written record of approval shall be in such form as the relevant Minister may prescribe by regulations and shall include—

- (a) particulars of the tracking device that is approved to be used,
- (b) the person who, or the vehicle or thing that, is to be monitored,
- (c) the name of the member of the Garda Síochána, F11[designated officer of the Ombudsman Commission,] member of the Defence Forces or officer of the Revenue Commissioners to whom the approval is granted,
- (d) the conditions (if any) subject to which the approval is granted,
- (e) the time at which the approval is granted, and
- (f) the duration of the use approved.

(8) Without prejudice to the maximum period for which an approval granted under this section may have effect, the superior officer who approves the use of a tracking device under this section may vary that approval, or any condition attached to it, at any time before the expiry of that approval.

(9) A superior officer who approves the use of a tracking device under this section shall make a report as soon as possible and, in any case, not later than 7 days after its use has ended, specifying the grounds on which the approval was granted, and including a copy of the written record of approval and a summary of the results of the monitoring.

(10) A report under subsection (9) shall be made to—

- (a) in the case of a member of the Garda Síochána, a member of the Garda Síochána of the rank of Assistant Commissioner,

F11[(aa) in the case of a designated officer of the Ombudsman Commission, the chairperson of the Ombudsman Commission,]

- (b) in the case of an officer of the Defence Forces, a general officer within the meaning of section 2 (as amended by section 2(b) of the Defence (Amendment) Act 1979) of the Defence Act 1954, and

- (c) in the case of an officer of the Revenue Commissioners, an officer of the Revenue Commissioners of the rank of Assistant Secretary.

(11) The Minister may, in the interests of the protection of the privacy and other rights of persons, the security of the State, and the aims of preventing the commission of, and detecting, arrestable offences, make regulations prescribing a period of less than 4 months as the maximum period for which approvals granted under this section may have effect, and such regulations may prescribe different periods in respect of different purposes or circumstances.

Annotations

Amendments:

F11 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(g)(i), (iii), (iv), S.I. No. 150 of 2015.

F12 Substituted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(g)(ii), S.I. No. 150 of 2015.

Editorial Notes:

E6 Power pursuant to subs. (7) exercised (6.02.2017) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Garda Síochána Ombudsman Commission) Regulations 2017* (S.I. No. 46 of 2017).

- E7** Power pursuant to subs. (7) exercised (17.02.2010) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Defence Forces) Regulations 2010* (S.I. No. 80 of 2010).
- E8** Form of written record of approval for purposes of section prescribed (27.07.2009) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Revenue Commissioners) Regulations 2009* (S.I. No. 290 of 2009), reg. 4 and sch.
- E9** Form of written record of approval for purposes of section prescribed (20.07.2009) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (An Garda Sochána) Regulations 2009* (S.I. No. 275 of 2009), reg. 4 and sch.

Retention of materials relating to applications and reports.

9.— (1) An application for an authorisation under *section 4* or *6*, and any documents supporting the application, shall be retained until—

- (a) the day that is 3 years after the day on which the authorisation concerned ceases to be in force, or
- (b) the day on which they are no longer required for any prosecution or appeal to which they are relevant,

whichever is later.

(2) A written record of approval prepared under *section 7(6)* or *8(6)*, and a report made under *section 7(11)* or *8(9)*, shall be retained until—

- (a) the day that is 3 years after the day on which the written record of approval is prepared or the report concerned is made, or
- (b) the day on which they are no longer required for any prosecution or appeal to which they are relevant,

whichever is later.

(3) The documents obtained as a result of surveillance carried out or tracking devices used under this Act, other than those referred to in *subsections (1)* and *(2)*, shall be retained until—

- (a) the day that is 3 years after the end of the surveillance or monitoring concerned, or
- (b) the day on which they are no longer required for any prosecution or appeal to which they are relevant,

whichever is later.

(4) Subject to *subsection (5)*, the documents referred to in *subsections (1)* to *(3)* shall be destroyed as soon as practicable after they are no longer required to be retained under those subsections.

(5) The relevant Minister may authorise in writing the retention of any of the documents referred to in this section where he or she considers it necessary to do so having regard to—

- (a) the interests of the protection of the privacy and other rights of persons,
- (b) the security of the State,
- (c) the aims of preventing the commission of, and detecting, arrestable offences, and
- (d) the interests of justice.

Restriction of disclosure of existence of authorisations and other documents.

10.— (1) The relevant Minister shall ensure that information and documents to which this Act applies are stored securely and that only persons who he or she authorises for that purpose have access to them.

(2) In the interests of the protection of the privacy and other rights of persons, the security of the State, and the aims of preventing the commission of, and detecting, arrestable offences, the relevant Minister may make regulations prescribing—

- (a) the persons or categories of persons who are to have access for the purposes of this section to information with respect to the existence of authorisations, approvals granted under *sections 7 and 8* and documents referred to in *section 9*,
- (b) the procedures and arrangements for the secure storage, and the maintenance of the security, of that information and those documents, and
- (c) the number of copies that may be made of those documents and the destruction of those copies as soon as possible after they are no longer required under *section 9*.

(3) Notwithstanding *section 13*, the Minister may make regulations respecting the disclosure or non-disclosure, to the person who was its subject or other persons whose interests are materially affected by it, of the existence of an authorisation or an approval under *section 7 or 8*, provided that any disclosure authorised by such regulations is—

- (a) consistent with the purposes for which the authorisation or approval concerned was issued or granted,
- (b) consistent with the security of the State, the protection of persons' privacy and other rights and the aims of preventing and detecting the commission of arrestable offences, and
- (c) unlikely to hinder the investigation in the future of such offences.

(4) Any regulation made under *subsection (3)* may—

- (a) require consultation by the Minister, in any particular case of disclosure, with such classes of persons as may be prescribed,
- (b) prescribe categories of persons (other than the subjects of the authorisations or approvals) whose interests are materially affected by authorisations or approvals, to whom disclosure is to be made, and
- (c) permit the imposition of terms and conditions limiting the extent or detail of disclosure as necessary, having regard to the matters referred to in *subsection (3)*.

Complaints procedure.

11.— (1) A person who believes that he or she might be the subject of an authorisation or an approval under *section 7 or 8* may apply to the Referee for an investigation into the matter.

(2) A superior officer who makes a report under *section 7 (11) or 8 (9)*, or F13[a person who] receives a report under *section 7 (12) or 8 (10)*, may apply to the Referee for an investigation into a matter if he or she believes that such an investigation would be in the interests of justice.

(3) If an application is made under this section (other than one that the Referee considers to be frivolous or vexatious), the Referee shall investigate—

- (a) whether an authorisation was issued or an approval was granted as alleged in the application, and
- (b) if so, whether there has been a relevant contravention.

(4) If, after investigating the matter, the Referee concludes that there has been a relevant contravention, the Referee shall—

- (a) notify the applicant, and any other person whose interests are materially affected by the relevant contravention, in writing of that conclusion, and
- (b) make a report of his or her findings to the Taoiseach.

(5) In the circumstances referred to in *subsection (4)*, the Referee may also, if he or she is of opinion that the relevant contravention was material and that to do so would be justified in the circumstances, by order do one or more of the following things:

- (a) direct—
 - (i) the quashing of the authorisation or the reversal of the approval, and
 - (ii) the destruction of the written record of approval concerned, the report under *section 7 (11)* or *8 (9)* concerned, and any information or documents obtained as a result of the authorisation or approval;
- (b) make a recommendation for the payment of such sum, not exceeding €5,000, specified in the order by way of compensation to the person who was the subject of the authorisation or approval;
- (c) report the matter and any recommendation under *paragraph (b)* to—
 - (i) the F14[the Ombudsman Commission], in the case of a contravention by the Garda Síochána,
 - F13[(ia) the Minister, in the case of a contravention by the Ombudsman Commission,]
 - (ii) the Minister for Defence, in the case of a contravention by the Defence Forces,
 - (iii) the Minister for Finance, in the case of a contravention by the Revenue Commissioners;
- (d) report the matter and any recommendation under *paragraph (b)* to the judge designated under *section 12*.

(6) If the Referee is of opinion that, in all the circumstances, it would not be in the public interest to—

- (a) notify, under *subsection (4) (a)*, the applicant or the other person, if any, of a conclusion that there has been a relevant contravention,
- (b) direct the quashing, reversal or destruction under *subsection (5) (a)*, or
- (c) make a recommendation for the payment of a sum by way of compensation under *subsection (5) (b)*,

he or she shall decline to do so.

(7) If, after investigating the matter, the Referee concludes that there has not been a relevant contravention, the Referee shall give notice in writing to the applicant stating only that there has been no such contravention.

(8) A decision of the Referee under this section is final.

(9) A relevant contravention that is not material does not of itself constitute a cause of action at the suit of a person who was the subject of the authorisation or approval concerned.

(10) A person in charge of a Garda Síochána station within the meaning of section 99(10) of the Garda Síochána Act 2005, a place under the control of F15[the Ombudsman Commission,] the Defence Forces or the Revenue Commissioners or any other place in which documents relevant to an investigation under this section are kept shall ensure that the Referee has access to those places, and to the authorisations, written records of approval, reports and other relevant documents that the Referee may request.

(11) The Referee—

(a) may, on his or her own initiative, and

(b) shall, where a case has been referred to him or her by the designated judge under section 12 (8),

investigate whether there has been a relevant contravention and this section (other than subsection (7)) shall apply to such an investigation as if the references to “the applicant” in subsections (4) and (6) were to “the person who was the subject of the authorisation or approval”.

(12) In this section—

“Referee” means the holder of the office of Complaints Referee under the Act of 1993;

“relevant contravention” means a contravention of a provision of sections 4 to 8.

Annotations

Amendments:

F13 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(h)(ii)(II), (iii), S.I. No. 150 of 2015.

F14 Substituted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(g)(ii)(I), S.I. No. 150 of 2015.

F15 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(h)(i), (ii)(II), (iii), S.I. No. 150 of 2015.

Review of operation of this Act by designated judge.

12.— (1) After consulting with the Minister, the President of the High Court shall invite a judge of the High Court to undertake (while serving as such a judge) the duties specified in this section and, if the invitation is accepted, the Government shall designate the judge for the purposes of performing those functions.

(2) The designated judge holds office in accordance with the terms of the designation.

(3) The functions of the designated judge are to—

(a) keep under review the operation of sections 4 to 8, and

(b) report to the Taoiseach from time to time and at least once every 12 months concerning any matters relating to the operation of those sections that the designated judge considers should be reported.

(4) For the purpose of performing his or her functions the designated judge may investigate any case in which an authorisation is issued under section 5 or renewed or varied under section 6 or an approval is granted under section 7 or 8.

(5) A person in charge of a Garda Síochána station within the meaning of section 99(10) of the Garda Síochána Act 2005, a place under the control of F16[the

Ombudsman Commission,] the Defence Forces or the Revenue Commissioners or any other place in which documents relevant to the performance of the functions of the designated judge are kept shall ensure that the designated judge has access to those places, and to the authorisations, written records of approval, reports and other relevant documents that the designated judge may request.

(6) The Taoiseach shall ensure that a copy of a report under *subsection (3)(b)* is laid before each House of the Oireachtas not later than 6 months after it is made, together with a statement of whether any matter has been excluded under *subsection (7)*.

(7) If the Taoiseach considers, after consultation with the designated judge, that the publication of any matter in a report, copies of which are to be laid before the Houses under *subsection (6)*, would be prejudicial to the security of the State, the Taoiseach may exclude that matter from those copies.

(8) Where the designated judge investigates a case under *subsection (4)* and is of the opinion that it is in the interests of justice to do so, he or she may refer that case to the Referee for an investigation under *section 11 (11)*.

Annotations

Amendments:

F16 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015 (3/2015)*, s. 13(i), S.I. No. 150 of 2015.

Confidentiality of information.

13.— (1) A person shall not disclose, inside or outside the State, any information in connection with the operation of this Act in relation to surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8*, including any information or documents obtained as a result of such surveillance, or reveal the existence of an application for the issue of an authorisation, the variation or renewal of an authorisation under *section 6* or the grant of an approval under *section 7* or *8*, unless the disclosure is to an authorised person and is—

- (a) for the purposes of the prevention, investigation or detection of crime,
- (b) for the prosecution of offences,
- (c) in the interests of the security of the State, or
- (d) required under any other enactment.

(2) A relevant person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person other than a relevant person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €1,000 or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 2 years or both.

(4) In this section—

“authorised person” means—

- (a) a person referred to in section 62(4)(a) of the Garda Síochána Act 2005,
- (b) the Minister for Defence,
- (c) the Minister for Finance, and
- (d) a person the disclosure to whom is—
 - (i) authorised by the Commissioner of the Garda Síochána, F17[the chairperson of the Ombudsman Commission,] the Chief of Staff of the Defence Forces or a Revenue Commissioner, or
 - (ii) otherwise authorised by law;

“relevant person” means a person who is or was—

- (a) a member of the Garda Síochána, F17[a designated officer of the Ombudsman Commission,] a member of the Defence Forces or an officer of the Revenue Commissioners,
- (b) a reserve member of the Garda Síochána within the meaning of the Garda Síochána Act 2005,
F17[(ba) an officer of the Ombudsman Commission other than a designated officer of the Ombudsman Commission,]
- (c) a member of the Reserve Defence Force within the meaning of the Defence Act 1954,
- (d) a member of the civilian staff of the Garda Síochána or of the Defence Forces, or
- (e) engaged under a contract or other arrangement to work with or for the Garda Síochána, F17[the Ombudsman Commission,] the Defence Forces or the Revenue Commissioners.

Annotations

Amendments:

F17 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(j), S.I. No. 150 of 2015.

Admissibility of evidence.

14.— (1) Evidence obtained as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8* may be admitted as evidence in criminal proceedings.

(2) Nothing in this Act is to be construed as prejudicing the admissibility of information or material obtained otherwise than as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8*.

(3) (a) Information or documents obtained as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8* may be admitted as evidence in criminal proceedings notwithstanding any error or omission on the face of the authorisation or written record of approval concerned, if the court, having regard in particular to the matters specified in *paragraph (b)*, decides that—

- (i) the error or omission concerned was inadvertent, and

- (ii) the information or document ought to be admitted in the interests of justice.
- (b) The matters referred to in *paragraph (a)* are the following:
- (i) whether the error or omission concerned was serious or merely technical in nature;
 - (ii) the nature of any right infringed by the obtaining of the information or document concerned;
 - (iii) whether there were circumstances of urgency;
 - (iv) the possible prejudicial effect of the information or document concerned;
 - (v) the probative value of the information or document concerned.
- (4) (a) Information or documents obtained as a result of surveillance carried out under an authorisation or under an approval granted in accordance with *section 7* or *8* may be admitted as evidence in criminal proceedings notwithstanding any failure by any member of the Garda Síochána, F18[designated officer of the Ombudsman Commission,] member of the Defence Forces or officer of the Revenue Commissioners concerned to comply with a requirement of the authorisation or approval concerned, if the court, having regard in particular to the matters specified in *paragraph (b)*, decides that—
- (i) the member or officer concerned acted in good faith and that the failure was inadvertent, and
 - (ii) the information or document ought to be admitted in the interests of justice.
- (b) The matters referred to in *paragraph (a)* are the following:
- (i) whether the failure concerned was serious or merely technical in nature;
 - (ii) the nature of any right infringed by the obtaining of the information or document concerned;
 - (iii) whether there were circumstances of urgency;
 - (iv) the possible prejudicial effect of the information or document concerned;
 - (v) the probative value of the information or document concerned.
- (5) It shall be presumed, until the contrary is shown, that a surveillance device or tracking device used by a member of the Garda Síochána, F18[a designated officer of the Ombudsman Commission,] a member of the Defence Forces or an officer of the Revenue Commissioners for the purposes referred to in this Act is a device capable of producing accurate information or material without the necessity of proving that the surveillance device or tracking device was in good working order.

Annotations

Amendments:

- F18** Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015 (3/2015)*, s. 13(k), S.I. No. 150 of 2015.

Disclosure of information.

15.— (1) Unless authorised by the court, the existence or non-existence of the following shall not be disclosed by way of discovery or otherwise in the course of any proceedings:

- (a) an application under *section 4* or *6*;
- (b) an authorisation;
- (c) an approval granted under *section 7* or *8*;
- (d) surveillance carried out under an authorisation or under an approval granted under *section 7*;
- (e) the use of a tracking device under *section 8*; and
- (f) documentary or other information or evidence in relation to—
 - (i) the decision to apply for an authorisation or an approval under *section 7* or *8*, or
 - (ii) anything referred to in *paragraphs (a) to (e)*.

(2) The court shall not authorise the disclosure if it is satisfied that to do so is likely to create a material risk to—

- (a) the security of the State,
- (b) the ability of the State to protect persons from terrorist activity, terrorist-linked activity, organised crime and other serious crime,
- (c) the maintenance of the integrity, effectiveness and security of the operations of the Garda Síochána, F19[the Ombudsman Commission,] the Defence Forces or the Revenue Commissioners, or
- (d) the ability of the State to protect witnesses, including their identities.

(3) Notwithstanding *subsection (2)*, the court may authorise the disclosure, subject to such conditions as it considers justified, if in all of the circumstances it is in the interests of justice to do so.

(4) In this section—

“organised crime” has the meaning it has in Part 7 of the Criminal Justice Act 2006;

“terrorist activity” and “terrorist-linked activity” have the meanings they have in section 4 of, and Schedule 2 to, the Criminal Justice (Terrorist Offences) Act 2005.

Annotations

Amendments:

F19 Inserted (27.04.2015) by *Garda Síochána (Amendment) Act 2015* (3/2015), s. 13(l), S.I. No. 150 of 2015.

Regulations.

16.— (1) The Minister, the Minister for Defence and the Minister for Finance may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed by him or her.

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

(3) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it has been 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.

Annotations**Editorial Notes:**

- E10** Power pursuant to section exercised (6.02.2017) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Garda Síochána Ombudsman Commission) Regulations 2017* (S.I. No. 46 of 2017).
- E11** Power pursuant to section exercised (17.02.2010) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Defence Forces) Regulations 2010* (S.I. No. 80 of 2010).
- E12** Power pursuant to subs. (1) exercised (27.07.2009) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (Revenue Commissioners) Regulations 2009* (S.I. No. 290 of 2009).
- E13** Power pursuant to subs. (1) exercised (20.07.2009) by *Criminal Justice (Surveillance) Act 2009 (Written Record of Approval) (An Garda Síochána) Regulations 2009* (S.I. No. 275 of 2009).

Amendment of
Garda Síochána
Act 2005.

17.— The definition of “enactment” in section 98(5) of the Garda Síochána Act 2005 is amended by—

- (a) deleting “and” at the end of paragraph (a),
- (b) in paragraph (b), substituting “Postal and Telecommunications Services Act 1983, and” for “Postal and Telecommunications Services Act 1983;”, and
- (c) inserting the following after paragraph (b):
- “(c) any provision of the *Criminal Justice (Surveillance) Act 2009*;”.

Amendment of
Courts (Supple-
mental Provi-
sions) Act 1961.

18.— Section 32A(1) (inserted by section 180 of the Criminal Justice Act 2006) of the Courts (Supplemental Provisions) Act 1961 is amended—

- (a) in paragraph (c), by substituting “such assets or proceeds;” for “such assets or proceeds.”, and
- (b) by inserting the following after paragraph (c):
- “(d) the power to issue, vary or renew an authorisation under section 5 or 6 of the *Criminal Justice (Surveillance) Act 2009*.”.

Short title.

19.— This Act may be cited as the Criminal Justice (Surveillance) Act 2009.