



Report by Minister for Justice

on the

**Operation of Section 8 of the
Criminal Justice (Amendment) Act 2009 pursuant to Section
8(6) of that Act**

June 2022

Introduction

The Criminal Justice (Amendment) Act 2009 put in place certain additional legislative measures to combat organised crime.

Among the measures are those contained in Section 8, which provides that certain offences under Part 7 of the Criminal Justice Act 2006, as amended, are deemed to be scheduled offences for the purposes of Part V of the Offences against the State Act 1939.

The Section declares that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to these offences.

The effect of this Section is that the offences in question shall be tried in the Special Criminal Court unless the Director of Public Prosecutions directs that a person not be sent forward for trial by that court.

The offences under Part 7 of the Criminal Justice Act 2006 to which Section 8 refers are:

Section 71A - directing the activities of a criminal organisation

Section 72 - participating in or contributing to certain activities of a criminal organisation

Section 73 - committing an offence for a criminal organisation

Section 76 - liability for offences by bodies corporate

A more detailed note on the relevant offences is provided in the Appendix to this Report.

The provisions in Section 8 are expressly aimed at ensuring the integrity of the criminal justice system and protecting it from being subverted by criminal groups. The Section also removes the possibility of jury intimidation by removing the jury from the trial process for these offences in certain cases.

Section 8 provides that the Section shall cease to be in operation unless a resolution has been passed by each House of the Oireachtas resolving that the Section should continue in operation and for such period as may be specified in the resolutions. The Houses of the Oireachtas passed such resolutions in June 2021 to continue the Section in operation for a period of 12 months beginning on 30 June 2021.

The Section further provides that before a resolution is passed to continue the Section in operation, the Minister shall prepare a report, which shall be laid before both Houses of the Oireachtas, of the operation of the Section during a period beginning on the date of the latest previous report in relation to this Section and ending not later than 21 days before the date of moving the resolutions. This report is in fulfilment of that requirement.

Current Situation

Organised criminal groups continue to present a significant challenge in the State. There are a number of criminal gangs in the State willing to engage in murder, armed robbery, smuggling and supplying drugs, money-laundering, kidnapping and other serious offences in pursuit of criminal gain. These groups also exert influence in our communities and create a climate of fear through which they maintain their malign influence in communities throughout the State.

The international nature of Irish organised crime has come to the fore as they seek to exploit the increasingly connected global environment and exert their influence beyond the Irish borders. An Garda Síochána has developed excellent relationships with international partners and international law enforcement bodies to ensure new and innovative measures are available in tackling the most dangerous transnational organisations.

The challenge posed by organised crime has resulted in the Garda Authorities continuing to deploy very significant efforts and resources. In particular, in 2015 An Garda Síochána strengthened its capacity to tackle organised crime through the creation of the Garda National Drugs and Organised Crime Bureau (GNDOCB). The considerable effort on the part of An Garda Síochána is continuing to achieve significant progress in tackling serious organised crime gangs. That sustained focus by An Garda Síochána to this area has resulted in convictions and ongoing seizures of drugs, firearms and ammunition. An Garda Síochána will continue to protect communities, seek to prevent loss of life, and disrupt organised criminal activity with the aim of securing evidence for prosecutions.

An Garda Síochána's response to organised crime gangs has seen the deployment of significant operations targeting those involved. These operations have many strands aimed at successfully disrupting and targeting the activities of these groups. These operations are supplemented by personnel from other specialist units including the regional Armed Support Unit, the Drugs Unit and

the Divisional Road Policing Unit and have resulted in significant seizures of cash, firearms and controlled drugs.

Since it was established, the Garda National Organised Crime Bureau has had significant successes in tackling organised crime with the seizure of large quantities of controlled substances, cash, firearms and ammunition. In 2021 the Bureau seized in excess of €63m worth of illicit drugs and , €5.6m in cash. In addition, in excess of €8m was forfeited to the State in 2021.

In 2021 An Garda Síochána commenced an enhanced national anti-drugs strategy 'Operation Tara'. The focus of Operational Tara is to disrupt, dismantle and prosecute drug trafficking networks, at all levels – international, national and local.

The work of the Criminal Assets Bureau is another important aspect of the response to organized crime. It continues to pursue actions under proceeds of crime, revenue and social protection legislation in targeting the suspected proceeds of criminal conduct.

Ongoing liaison between An Garda Síochána and law enforcement agencies throughout Europe and beyond has led to a number of successful operations targeting attempted smuggling and importation of drugs and has resulted in significant seizures and arrests both in the State and in other jurisdictions.

The Government remains committed to relentlessly targeting organised crime and to sending a clear message that all necessary actions will be taken to bring those involved in organised crime to justice. In that regard, the Government is resolved to ensuring that An Garda Síochána are sufficiently resourced to continue to tackle the menace of organised crime, and maintains a strong and visible police presence throughout the country. To that end, a record budget in excess of €2 billion has been provided to An Garda Síochána in 2022.

Operation of Section 8 of the Act

The present report covers the period from 1 June 2021 to 31 May 2022.

The Garda Commissioner has reported to the Minister that 112 arrests have been made over that period in respect of the offences relevant to Section 8. These were as follows:

- Section 71A – 8 arrests,
- Section 72 – 86 arrests,
- Section 73 – 18 arrests.

Section 76 was not used in the reporting period in question.

The Garda Commissioner has reported that since the enactment of the Criminal Justice (Amendment) Act 2009 to the end of this reporting period, there have been a total of 642 arrests in related to the provisions of section 8 .

The total number of charges made during the reporting period in respect of alleged commission of offences arising from a suspected breach of the four relevant provisions in respect of which the provisions of Section 8 of the Criminal Justice (Amendment) Act 2009 applies, is 14, of which 7 charges were brought before the Special Criminal Court.

Ten individuals were convicted during the reporting period in respect of offences under Section 72, one individual has been convicted in respect of Section 71A and five individuals were convicted under Section 73, before the Special Criminal Court.

Between 1 June 2021 and 31 May 2022, four (4) persons appeared for sentencing before the Special Criminal Court in relation to their roles in facilitating an Organised Crime Group's attempt to murder .

Views of the Garda Authorities

While An Garda Síochána has recorded many noteworthy successes against organised criminal groups engaged in a variety of organised criminal enterprises, the fact remains that these groups continue to operate and pose a significant threat within Irish society. The success of An Garda Síochána in this area of policing is in no small measure attributable to the robust legislation currently available.

The Garda Commissioner has informed the Minister that this legislation continues to be important in the ongoing efforts to tackle criminality associated with serious organised crime. The Garda Commissioner recommends the continued operation of the relevant provisions of the Criminal Justice (Amendment) Act 2009 for a further twelve months commencing 30 June 2022 .

Views of the Minister

The Minister for Justice :

- taking into account the continuing serious criminal activities of certain organised criminal gangs in the State,
- considering that Section 8 represents an important tool for ensuring the effective administration of justice in certain cases and
- having regard to the advice of the Garda Authorities as to the importance of the legislation in the ongoing fight against organised crime,

concludes that Section 8 of the Criminal Justice (Amendment) Act 2009 should be continued in operation.

This legislation is part of a robust framework of laws in place to support the operational efforts of An Garda Síochána, and to support the Courts in trying suspects brought before them.

The Minister is of the view that Section 8 remains a valuable legislative provision when required to combat serious, organised crime, and to protect the integrity of the criminal justice system.

Section 8 does not place a time limit on the period for which the Oireachtas may resolve to continue the Section in operation. However, recognising the fact that it represents a departure from the normal practice of jury trial, it is the Minister's view that it is appropriate to keep the provision under review and to enable the Oireachtas to have the opportunity, periodically, to consider the need for the Section. It is proposed, therefore, to continue Section 8 in operation for a further period of 12 months beginning on 30 June 2022.

Review of the Offences Against the State Acts

As outlined above, Section 8 of the Criminal Justice (Amendment) Act 2009 provides that certain offences under Criminal Justice Act 2006, are deemed to be scheduled offences for the purposes of Part V of the Offences against the State Act 1939, and therefore liable to be tried in the Special Criminal.

The Minister for Justice established an independent Review Group in February 2021. The Group is working to a comprehensive programme, in line with its terms of reference which are to examine all aspects of the Offences Against the State Acts 1939-1998 taking into account:

- the current threat posed by domestic/international terrorism and organised crime
- the duty to deliver a fair and effective criminal justice system to ensure the protection of communities and the security of the State
- Ireland's obligations in relation to Constitutional and ECHR rights and international law.

The Chair of the Review Group has recently reported to the Minister that the Group has concluded its public consultation as well as a series of useful engagements with relevant stakeholders, statutory agencies and civil society organisations and expects to be in a position to furnish its report to her in the autumn of this year.

More information on the review can be found at: www.oasareview.ie.

APPENDIX

Note on Sections 71A, 72, 73 and 76 of the Criminal Justice Act 2006, as amended

Section 71A - directing the activities of a criminal organisation

Section 71A inserted by Section 5 of the Criminal Justice (Amendment) Act 2009 seeks to target those in a criminal organisation, at whatever level, who direct the activities of the organisation but who may not participate in the commission of offences. The Section also provides that any statement or conduct of an accused, causing a reasonable inference that the person was directing the activities of a criminal organisation, shall be admissible as evidence and it also makes provision for inferences that may be drawn from documentary evidence. The offence carries a penalty of up to life imprisonment.

Section 72 - participating in or contributing to certain activities of a criminal organisation

Section 72 amends the existing offence of participation in organised crime. It provides for the offence of participating in any activity in the knowledge that doing so could reasonably, or reckless as to whether such participation would, enhance or facilitate the commission of an offence by a criminal organisation. The penalty for the offence is increased from up to five to up to 15 years imprisonment.

Section 73 - committing an offence for a criminal organisation

Section 73 amends the existing offence of committing an offence for a criminal organisation by increasing the penalty for the offence from up to ten to up to 15 years imprisonment.

Section 76 - liability for offences by bodies corporate

Section 76 provides for liability where an offence under Part 7 of the Criminal Justice Act 2006 is committed by a body corporate.