

Report by Minister for Justice and Equality

on the

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

Period 1 June 2014 to 31 May 2015

June 2015

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.

In effect, this means 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:

- Directing the activities of a criminal organisation,
- Participating in or contributing to certain activities of a criminal organisation,
- Committing an offence for a criminal organisation,
- Liability for offences committed by a body 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 2014 to continue the section in operation for a period of 12 months beginning on 30th June 2014.

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.

Operation of Section 8 of the Act

The present report covers the period from 1 June 2014 to 31 May 2015. The Garda Authorities have informed the Minister that 25 arrests have been made over that period in respect of the offences relevant to section 8. These were arrests made under Sections 72 and 73. Sections 71A and 76 were not used in the reporting period in question.

Since the enactment of the provisions on 23 July 2009 to the end of this reporting period, there have been a total of 259 arrests made in respect of the offences relevant to section 8.

No cases have been sent for trial by the Special Criminal Court in accordance with section 8 in the period under report. However, there have been a number of convictions under section 72 resulting in lengthy jail sentences for the individuals concerned (9 years in two cases). In addition there have been a number of charges recorded against individuals who had been arrested under section 8 of the 2009 Act under varying legislation including the Criminal Justice (Theft and Fraud Offences) Act 2001.

Views of the Garda Authorities

It is the view of the Garda Commissioner that given the significance of the threat posed by organised crime, this legislation has proved an effective tool in tackling organised criminal groups, including those involved in burglaries, cash-in-transit robberies and so-called 'tiger' kidnappings, and bringing those involved in such activities to justice. It is the Garda Commissioner's view that the provisions of section 8 target such criminal behavior and have proved effective in greatly assisting the investigation of criminal acts being planned and committed by organised crime gangs operating in this jurisdiction. The Garda Commissioner points to the invocation of these provisions on 25 occasions in the past 12 months in support of her recommendation for the renewal of section 8 for a further 12 months.

Views of the Minister

The Minister for Justice and Equality:

- 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.

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 2015.

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.