

**Report by Minister for Justice and Equality**

**on the**

**Operation of Sections 2 to 4, 6 to 12, 14 and 17 of the  
Offences against the State (Amendment) Act 1998 pursuant  
to Section 18(3) of that Act**

**Period 1 June 2014 to 31 May 2015**

**June 2015**

## **Introduction**

The Offences against the State (Amendment) Act 1998 was enacted in the wake of the murder of 29 people by the Real IRA in Omagh on 15 August that year. Twenty-nine innocent lives were lost in that senseless attack. The Government of the day moved to ensure that the Garda Síochána and the legal system had the necessary powers to deal effectively with those responsible for these murders and to let other like-minded persons know that the State was taking appropriate measures to prevent further such atrocities.

The Act, which amended the earlier Offences Against the State Acts, contains provisions which change the rules of evidence in relation to the offence of membership of an unlawful organisation, create certain new/substantive offences and extend the maximum period of detention permitted under section 30 of the 1939 Act.

The Act also contained a provision that certain sections would cease to be in operation unless the Oireachtas passes resolutions to continue them in operation for a further period.

Under Section 18 of the Act, as amended by section 37 of the Criminal Justice Act 1999, and by virtue of Resolutions passed by Dáil and Seanad Éireann in June 2014, the relevant sections of the 1998 Act will cease to operate on and from 30 June 2015, unless a further Resolution is passed by each House to continue in operation the relevant sections for such period not exceeding 12 months as may be specified in the Resolution. The relevant sections are sections 2 to 4, 6 to 12, 14 and 17. A note on these sections of the Act is provided in the Appendix 2 to this Report.

Section 18 also provides that before such Resolutions may be passed, the Minister for Justice and Equality must lay before each House a Report on the operation of the sections in question covering the period starting on the last day covered by the previous Report on the operation of the Act and ending not later than 21 days before the date of the moving of the Resolution in that House. The present Report fulfils that obligation.

## **Operation of Provisions of Act**

The Garda authorities have provided the Minister with the following information in relation to the operation of the Act during the period 1 June, 2014 to 31 May, 2015.

- a) Section 2 (membership of an unlawful organization - inferences that may be drawn) was utilised on 42 occasions.

- b) Section 4 amending Section 3 of the Offences Against the State (Amendment) Act 1972 was utilised on 1 occasion.
- c) Section 6 (directing an unlawful organisation) was utilised on 1 occasion.
- d) Section 7 (possession of articles for purposes connected with certain offences) was utilised on 21 occasions.
- e) Section 9 (withholding information) was utilised on 10 occasions.
- f) Section 10 (extension of period of detention by a District Court Judge): extensions were applied for in 20 cases, and granted, on 19 occasions. Charges resulted in 10 of these cases. A conviction resulted on 1 occasion.
- g) Section 11 (re-arrest under Section 30 of 1939 Act) was utilised on 18 occasions.
- h) Section 14 (scheduled offences under Act ) was utilised on 9 occasions.

Sections 3, 8, 12 and 17 were not utilised in the period under report.

The total number of people arrested under the provisions of Section 30 Offences Against the State Act 1939 as amended for the reporting period required under the Act is 246.

Of this total, 43 persons were detained for offences contrary to the provisions of the Offences Against the State (Amendment) Act 1998 and 203 were arrested or detained in respect of offences pursuant to the Offences Against the State Act 1939.

There were 17 convictions secured in the Courts in the period under report and a further 49 persons are awaiting trial.

### **Views of the Garda Authorities**

The Garda Commissioner has made clear her view that this legislation continues to be one of the most important tools available to An Garda Síochána in the ongoing fight against terrorism. She has noted that key provisions of the Act are regularly used in the ongoing investigation of terrorist activity and that she considers it essential that the relevant provisions of the Act 1998 be extended for a further period of twelve months from 30<sup>th</sup> June, 2015.

Attached to the Report (Appendix 1) is a Table which shows the number of times that the various Sections have been used since the enactment of the 1998 Act.

The Report indicates that a number of sections, namely, Section 3 (Notification of Witnesses), Section 8 (Unlawful collection of information), Section 12 (training persons in the making or use of firearms) and Section 17 (Forfeiture of Property) were not utilised during the reporting period in question. However, it should not be inferred from this that there is not an ongoing need for these provisions. Given the extremely important purpose of the legislation, it is essential that it is not found wanting in any respect and clearly all possibilities need to be anticipated.

### **Views of the Minister**

The Minister for Justice and Equality;

- taking into account the current security situation and having regard in particular to the ongoing, significant threat posed by paramilitary groups;
- bearing in mind also the threat from international terrorism;
- mindful of the advice of the Garda authorities; and
- having considered the information contained in this Report,

concludes that the relevant sections of the 1998 Act should be continued in force for a further period of 12 months from 30th June 2015.

---

## Appendix 1

### Offences against the State (Amendment) Act 1998

#### Utilisation of Certain Provisions over Time

The table below shows the number of times each of the renewed sections of the 1998 Act have been utilised in the reporting period ending in mid-year of the year shown. As these reporting periods have changed somewhat over the years, the figures should not be regarded as constituting an exact year-on-year comparison of usage.

In cases where N/A (not available) is specified the Garda authorities did not provide usage figures; rather, they provided figures in relation to the numbers of persons charged or convictions secured as a result of using the relevant provisions. In most cases, no persons were charged or convictions secured.

	<i>S. 2</i>	<i>S. 3</i>	<i>S. 4</i>	<i>S. 5</i>	<i>S. 6</i>	<i>S. 7</i>	<i>S. 8</i>	<i>S. 9</i>	<i>S.10</i>	<i>S.11</i>	<i>S.12</i>	<i>S.14</i>	<i>S.17</i>
<b>2000</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	29	0	N/A	N/A	0
<b>2001</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	27	0	N/A	N/A	0
<b>2002</b>	N/A	2	N/A	13	0	20	N/A	115	39	N/A	N/A	56	0
<b>2003</b>	43	0	0	1	0	18	0	17	32	2	0	83	0
<b>2004</b>	29	0	0	16	0	12	0	30	1	4	0	76	0
<b>2005</b>	30	1	1	20	0	2	0	69	5	2	0	99	0
<b>2006</b>	14	9	2	34	0	2	0	110	15	7	0	54	0
<b>2007</b>	10	9	7	39	1	9	0	79	8	5	0	120	0
<b>2008</b>	80	12	13	34	0	16	14	127	12	32	0	157	0
<b>2009</b>	20	12	0	Repealed	1	28	0	137	41	18	0	166	0
<b>2010</b>	23	4	0	-	0	30	0	117	25	16	0	147	0
<b>2011</b>	48	12	0	-	0	24	1	63	12	5	0	88	0
<b>2012</b>	47	4	0	-	0	15	0	83	11	17	0	98	3
<b>2013</b>	62	19	0	-	0	10	2	40	10	4	0	52	0
<b>2014</b>	41	0	0	-	0	34	0	19	12	4	0	53	1
<b>2015</b>	42	0	1	-	1	21	0	10	19	18	0	9	0

## APPENDIX 2

### Note on Sections 2 to 4, 6 to 12, 14 and 17 of the Offences against the State (Amendment) Act 1998

#### **Section 2 – Membership of an Unlawful Organisation: Inferences that may be Drawn**

Section 2 provides for the drawing of inferences from the accused's failure to answer material questions in proceedings for an offence under Section 21 of the Offences against the State Act 1939 (membership of an unlawful organisation). The failure can corroborate evidence in relation to the offence but cannot be the sole basis for a conviction.

#### **Section 3 – Notification of Witnesses**

Section 3, as amended by Section 24 of the Criminal Justice Act 1999, provides that in proceedings for an offence under Section 21 of the Offences against the State Act 1939 the accused shall not, without the permission of the court, call any other person to give evidence in his/her behalf unless notice has been given of his/her intention to do so. The Section also deals with the details in relation to the notice to be given as well as the position where the accused was not informed of the notice requirements.

#### **Section 4 – Amendment of Section 3 of the Offences against the State (Amendment) Act 1972**

Section 4 amends Section 3 of the 1972 Act. Section 3 of that Act provides that any statement or conduct by an accused person implying or leading to a reasonable inference that s/he was member of an unlawful organisation will be evidence of such membership in proceedings under Section 21 of the 1939 Act. Section 4 adds the following as matters to be considered as 'conduct' for the purposes of Section 3 of the 1972 Act: 'movements, actions, activities, or associations on the part of the accused'.

#### **Section 6 – Directing an Unlawful Organisation**

Section 6 creates an offence of directing, at any level of the organisation's structure, the activities of an organisation in respect of which a suppression order has been made under Section 19 of the 1939 Act, punishable on conviction on indictment by up to life imprisonment.

### **Section 7 – Possession of Articles for Purposes Connected with Certain Offences**

Section 7 creates an offence of possession, etc., of any article giving rise to a reasonable suspicion that the article is in his/her possession for a purpose connected with the commission, preparation or instigation of an offence under the Explosives Substance Act 1883 or the Firearms Acts 1925 to 1990 which are offences scheduled to the 1939 Act.

### **Section 8 – Unlawful Collection of Information**

Section 8 creates an offence for a person to collect, record or possess information likely to be useful in the commission of serious offences by members of an unlawful organisation.

### **Section 9 – Withholding Information**

Section 9 creates an offence of withholding information which s/he knows to be of assistance in preventing the commission of a serious offence or in securing the apprehension, prosecution or conviction of a person for a serious offence.

### **Section 10 – Extension of Period of Detention under Section 30 of 1939 Act**

Section 10 extends the possible detention period under Section 30 of the 1939 Act by a further 24 hours. The further period must be authorised by a judge of the District Court. This brings the total period of possible detention to 72 hours.

### **Section 11 – Re-arrest under Section 30 of 1939 Act**

Section 11 provides that a person arrested and detained under Section 30 and released without charge cannot be re-arrested for the same offence or an offence for which he should reasonably have been suspected at the time of the first arrest, except with the authority of a warrant issued by a judge of the District Court.

### **Section 12 - Training Persons in the Making or Use of Firearms**

Section 12 creates an offence of instructing or receiving instruction in the making or use of firearms or explosives. A defence of lawful authority or reasonable excuse is, however, available.

#### **Section 14 - Offences under Act to be Scheduled Offences**

Section 14 provides that the offences created under Sections 6 to 9 and 12 are scheduled offences for the purpose of Part V of the Offences against the State Act 1939.

#### **Section 17 - Forfeiture of Property**

Section 17 inserts a new provision into Section 61 of the Criminal Justice Act 1994 to the effect that where a person has been convicted of an offence under Section 3 or 4 of the Explosive Substance Act 1883, Section 15 of the Firearms Act 1914 or Section 27A of the Firearms Act 1964, and a forfeiture order may be made by virtue of subsection (1) of Section 61 of the 1994 Act, the Court shall make the forfeiture order, unless having regard to matters mentioned in subsection (2) of that section and to the nature and seriousness of the offence which the person has been convicted, it is satisfied that there would be a serious risk of injustice to make the order.