



Report by Minister for Justice

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**

June 2024

Introduction

The Offences Against the State (Amendment) Act 1998 was enacted in response to the murder of 29 people by the Real IRA in Omagh on 15 August that year. 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 would take the appropriate measures to stand up to such atrocious activities and efforts to subvert the democratic will of the people of the island of Ireland.

The Act, which amended the earlier Offences Against the State Acts, contains important 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.

Recognising the particular nature of the powers in the Act, the Oireachtas included 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 2023, the relevant Sections of the 1998 Act will cease to operate on and from 30 June 2024, 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 Appendix 2 to this Report.

Section 18 also provides that before such Resolutions may be passed, the Minister for Justice 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.

Current Security Situation

Domestic terrorism

The prevailing threat picture is kept under continuous review to ensure all security threats are monitored. There remains a real and persistent threat from terrorist activity. The so-called 'dissident' republican paramilitary groups remain active in the State.

Protecting the State and the people from these groups, and their activities, is and will continue to be a priority for the Government and the Garda Authorities. These groups continue to reject the Good Friday Agreement. In doing so they continue to disregard the wishes of the overwhelming majority on the island, North and South, who want a future based on peace and founded in the primacy of democratic politics and respect for the rule of law.

These groups operate on an all-island basis and while the threat of attack from these groups in the State is generally considered to be low, they remain active here, carrying out fundraising and planning, and preparatory activities to support attacks in Northern Ireland. These groups continue to focus their efforts primarily on targeting members of the security forces in Northern Ireland.

While the recent lowering of the threat level in Northern Ireland is to be welcomed, the threat level remains 'substantial', meaning an attack is likely, and the State cannot be complacent in this regard. The State continues to deploy its resources having regard to the activities in this jurisdiction and the threat posed in Northern Ireland.

The Garda Authorities will continue to work closely with their police and security counterparts in Northern Ireland and Great Britain to combat the activities of these groups and to disrupt and bring to justice those involved in them.

Violent extremism and international terrorism

Ireland is no different to any open democracy, and therefore cannot be considered immune from the threat posed by violent extremism and international terrorism, be it from groups or radicalised lone actors.

Taking action to counter these threats is a priority for the Government. The Garda Authorities continue to put in place a robust framework of measures, both tactical and intelligence-based, to prevent and respond to the threat of attack. They are supported in this work by the considerable skills and assets of the Defence Forces where they are needed.

The threat level from this source to Ireland is kept under constant review by An Garda Síochána, in consultation with the Defence Forces, particularly in the light of ongoing developments and the international security landscape.

Europol in its most recent report ([Terrorism Situation and Trend Report 2023](#)) sets out the current threat situation at EU level and confirms that terrorism remains a key threat to the EU's internal security, with lone actors remaining the primary perpetrators of terrorist and violent extremist attacks.

Radicalisation leading to violent extremism and terrorism continues to be a concern in EU Member States including Ireland. Through the work of the EU's Radicalisation Awareness Network (RAN) Ireland participates fully in EU level efforts to counter radicalisation and violent extremism.

The expert advice is that while an attack in Ireland is possible, it is considered unlikely. However, the authorities here remain vigilant to the possibility and there is no complacency in this regard. It is critical that the authorities here continue to take all necessary measures proportionate to the threat and have a robust legislative framework to enable them to respond effectively.

The Garda Authorities will continue to work closely with their European and other international counterpart services and with relevant international bodies in responding to these threats, particularly in respect of sharing information and expertise in identifying and managing threats.

The threats posed by dissident republican terrorism and from violent extremism and international terrorism warrant the continuance in force of the particular provisions of the 1998 Act.

Independent Review of the Offences Against the State Acts

In June 2023, the Minister for Justice published both the majority and minority reports of the Independent Review Group appointed to examine all aspects of the Offences Against the State Acts following their consideration by Government.

At the time, the Minister noted the majority's assessment that there is, and will continue to be, an ongoing need for a special court, as permitted by the Constitution, to try a portion of the most serious criminal offences in certain limited and exceptional circumstances, and that the majority has also devised a suite of proposals in relation to how it might operate to ensure that the rights of accused persons are fully respected, and to support transparency and promote public confidence.

The Minister further noted that such an assessment requires serious consideration in the context of continuing to safeguard the security of the State and our citizens.

At the request of the Minister, the Department of Justice has engaged in detailed consultation on the recommendations of the Review Group and has examined the reports from a variety of perspectives including policy, governance and legislation.

Given the importance of the Acts over many decades, any proposals for reform must be thoroughly considered and approached with the utmost care. The outputs from this consultation and analysis are informing the preparation of a substantive response to the Review which the Minister will bring to Government for consideration in due course.

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 2023 to 31 May 2024:

- a) Section 2 - Membership of an Unlawful Organisation (inferences that may be drawn) - was utilised on 11 occasions.
- b) Section 7 - Possession of articles for purposes connected with certain offences - was utilised on 3 occasions.

- c) Section 9 - Withholding information - was utilised on 10 occasions.
- d) Section 11 - Re-arrest under Section 30 – was utilised on 2 occasions.
- e) Section 14 - Scheduled offences under Act - was utilised on 13 occasions.

The information indicates Sections 3, 4, 6, 8, 10, 12 & 17 were not utilised in the period under report. It should, however, not be inferred from this lack of usage that there is no necessity 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.

The total number of people arrested under the provisions of Section 30 of the Offences Against the State Act 1939, as amended, for the reporting period required under the Act is 87. Of this total, 11 people were detained for offences contrary to the provisions of the Offences Against the State (Amendment) Act, 1998 and 76 people were detained/arrested in respect of offences pursuant to the Offences Against the State Act, 1939. There were 4 convictions secured in the Courts in the period under report and a further 24 persons are awaiting trial.

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. An explanation of the relevant Sections of the 1998 Act is set out beneath at Appendix 2.

Views of the Garda Authorities

The Garda Commissioner is of the view that this legislation continues to be one of the most important tools available to An Garda Síochána in the ongoing fight against terrorism. Key provisions of the Act are regularly used in the ongoing investigation of terrorist activity. The Garda authorities are of the view that the renewal of the relevant provisions is strongly recommended as they are essential in tackling terrorism.

Views of the Minister

The Minister for Justice:

- 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 violent extremism and 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 30 June 2024.

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.

	S. 2	S. 3	S. 4	S. 5	S. 6	S. 7	S. 8	S. 9	S.10	S.11	S.12	S.14	S.17
2000	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	29	0	N/A	N/A	0
2001	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	27	0	N/A	N/A	0
2002	N/A	2	N/A	13	0	20	N/A	115	39	N/A	N/A	56	0
2003	43	0	0	1	0	18	0	17	32	2	0	83	0
2004	29	0	0	16	0	12	0	30	1	4	0	76	0
2005	30	1	1	20	0	2	0	69	5	2	0	99	0
2006	14	9	2	34	0	2	0	110	15	7	0	54	0
2007	10	9	7	39	1	9	0	79	8	5	0	120	0
2008	80	12	13	34	0	16	14	127	12	32	0	157	0
2009	20	12	0	Repealed	1	28	0	137	41	18	0	166	0
2010	23	4	0	-	0	30	0	117	25	16	0	147	0
2011	48	12	0	-	0	24	1	63	12	5	0	88	0
2012	47	4	0	-	0	15	0	83	11	17	0	98	3
2013	62	19	0	-	0	10	2	40	10	4	0	52	0
2014	41	0	0	-	0	34	0	19	12	4	0	53	1
2015	42	0	1	-	1	21	0	10	19	18	0	9	0
2016	68	16	12	-	0	2	1	32	7	25	0	18	1
2017	31	5	11	-	0	24	1	26	7	18	0	51	0
2018	21	3	10	-	0	0	1	2	3	8	0	11	0
2019	3	0	0	-	0	66	0	0	1	8	0	36	0
2020	11	5	0	-	0	20	0	9	9	4	0	19	0
2021	6	0	0	-	0	7	0	9	0	2	0	10	0
2022	0	0	1	-	0	2	0	1	0	0	0	3	0
2023	8	0	0	-	0	18	0	4	0	1	0	22	0
2024	11	0	0	-	0	3	0	10	0	2	0	13	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 a 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 or 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 he or she 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.