



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 2024

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 2023 to continue the Section in operation for a period of 12 months beginning on 30 June 2023.

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, on 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 gangs continue to engage in murder, smuggling and supplying drugs, firearms and explosives, and planning and carrying out kidnapping and robbery, which are very often committed with the threat of and/or the use of violence. The Garda Authorities continue to deploy very significant efforts and resources in combating the activities of organised criminal gangs in the State.

The activities of organised criminal groups extend beyond the jurisdiction and 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. In response, 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 considerable effort on the part of An Garda Síochána is continuing to achieve significant progress in tackling serious organised crime gangs. The sustained focus by An Garda Síochána has resulted in convictions and significant 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.

The Garda National Drugs and Organised Crime Bureau has had significant successes in tackling organised crime with the seizure of large quantities of controlled substances, cash, firearms and ammunition, with over €345 million worth of drugs seized by Gardaí since its establishment in 2015.

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

Given the nature of the offences and the individuals and gangs involved in their commission, prosecuting organised crime presents particular challenges. A problem that faces the authorities in the investigation and prosecution of organised criminals is the reluctance of persons to give evidence and the willingness of the individuals and criminal gangs involved to intimidate witnesses and jurors. The provision at Section 8 of the 2009 Act, which allows the Special Criminal Court to try the offences at hand, is expressly aimed at eliminating the possibility of jury intimidation by removing the jury from the trial process for these offences. The other procedural guarantees of the trial process remain in place.

The Government remains committed to combatting 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 €2.35 billion has been provided to An Garda Síochána in 2024.

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 Section 8 of the Act

The present report covers the period from 1 June 2023 to 31 May 2024.

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 – 13 arrests,
- Section 72 – 92 arrests,
- Section 73 – 7 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 864 arrests related to the provisions of Section 8 .

A total of 30 charges were laid before the courts, 10 of which were before the Special Criminal Court:

- 18 in respect of alleged breach of the provisions of Section 71A.
- 11 in respect of alleged breach of the provisions of Section 72.
- 1 in respect of alleged breach of the provisions of Section 73.
- No charges made pursuant to Section 76.

Also during this period, of the 9 convictions arising from suspected breaches of the 4 relevant provisions of the Criminal Justice Act, 2006 (as amended), in respect of which the provisions of Section 8 of the Criminal Justice (Amendments) Act, 2009 applies, 3 of these convictions were recorded before the Special Criminal Court;

- 7 convictions in respect of Section 72 of the Criminal Justice Act 2006, as amended by Section 6 of the Criminal Justice (Amendment) Act, 2009.
- No convictions in respect of Section 73 of the Criminal Justice Act, 2006.
- 2 individuals have been convicted in respect of alleged breach of the provisions of Section 71A of the said Act before the Special Criminal Court and are awaiting sentence.

During the period in question 3 people appeared for sentencing before the Special Criminal Court in relation to their roles in facilitating the criminal activities of organised crime groups;

- On 31 July 2023 at the Special Criminal Court, an individual was sentenced to 12 years imprisonment with one year suspended, for directing the activities of a criminal organisation, contrary to Section 71A of the Criminal Justice Act, 2006, as amended.
- On 7 March 2024, an individual was sentenced before the Special Criminal Court to 2 years imprisonment in relation to their involvement in enhancing the ability of an organised crime group to commit a serious offence, contrary to Section 72 of the Criminal Justice Act, 2006, as amended.
- On 15 May 2024 at the Special Criminal Court, an individual was sentenced to 2 years imprisonment in relation to their involvement in enhancing the ability of an organised crime group to commit a serious offence, murder, contrary to Section 72 of the Criminal Justice Act 2006.

Views of the Garda Authorities

While An Garda Síochána continues to achieve noteworthy successes against organised criminal groups engaged in a variety of criminal enterprises, 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 Section 8 of the Criminal Justice (Amendment) Act 2009 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 on 30 June 2024.

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.

The Minister is of the view that Section 8 remains a necessary legislative provision, which is part of the robust framework of laws in place to support the operational efforts of An Garda Síochána in tackling serious organised crime, and to support the Courts in trying suspects brought before them.

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 2024.

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 offence now carries an increased penalty of 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 10 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.