



**Interception of Postal Packets and Telecommunications Messages
(Regulation) Act 1993, Section 8(1) as substituted by the
Communications (Retention of Data) Act 2011, Section 11**

Report to the Taoiseach

Statement pursuant to Section 8(7) of the Act

This is to certify that no matter has been excluded from the attached report, dated 27 June 2022, in pursuance of subsection 8(8) of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.

Assistant Secretary
to the Government

30 June 2022

**THE REPORT OF THE DESIGNATED JUDGE MADE PURSUANT TO SECTION 8
(2) OF THE INTERCEPTION OF POSTAL PACKETS AND
TELECOMMUNICATIONS MESSAGES (REGULATION) ACT, 1993 AND
SECTION 12 (1) (c) OF THE COMMUNICATIONS (RETENTION OF DATA) ACT,
2011**

Introduction

1. I am the designated judge for the purposes of the above Acts, and this report is furnished in the exercise of my statutory duty of keeping the operation of the said legislation under review and ascertaining whether its provisions are being complied with. I report to An Taoiseach, pursuant to s. 8 (2) of The Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 (“the 1993 Act”), as amended by the Communications (Retention of Data) Act, 2011 (“the 2011 Act”). Further, under s. 8 (4) of the 1993 Act I may, if I think it desirable to do so, communicate with the Taoiseach or the Minister for Justice and Equality on any matter concerning interceptions.

2. I refer to my report of last year dated 16th June, 2021.

3. On 24th June, 2022 I attended at the following locations:

- (i) Garda Headquarters, Phoenix Park, Dublin 8;
- (ii) Permanent Defence Forces, McKee Barracks, Blackhorse Avenue, Dublin 7;
and
- (iii) The Department of Justice and Equality, 51 St. Stephens Green, Dublin 2.

4. The Garda Síochána Ombudsman Commission (by letter dated 10th June, 2022), the Revenue Commissioners (by letter dated 8th June, 2022), and the Competition and Consumer

Protection Commission (by letter dated 15th June, 2022) informed me that they had not availed of the provisions of either the 1993 Act or the 2011 Act in the past year.

The 1993 Act / 2011 Act

5. The 1993 Act provides for the interception of postal packets and/or telecommunications messages in the course of the investigation or prevention of crime and/or in the interests of the security of the State.

6. Telecommunications messages for the purposes of the 1993 Act has the meaning given in the Postal and Telecommunications Services Act, 1983, legislation that was enacted close to 40 years ago. I will be commenting on this later in this report.

7. The 2011 Act provides for access to data retained by service providers which is required for:

- (a) The prevention, detection, investigation, or prosecution of a serious offence;
- (b) The safeguarding of the security of the State;
- (c) The saving of human life.

8. There are ongoing legal issues concerning the disclosure of data by a service provider required for "*the prevention, detection, investigation or prosecution of a serious offence*". This has been the subject of a recent judgment of the European Court of Justice. New legislation is clearly required, and I understand that it is anticipated that such legislation will be published shortly.

Crime/Security of the State

9. It is essential that there are statutory provisions for telecommunications to be intercepted for the investigation and prevention of crime. It is also essential that there are such provisions where the security of the State is under threat. The dangers and threats to the security of the State come from individuals and groups organised or based both within the State and

outside it. The Russian invasion of Ukraine has considerably increased the level of danger and threat to the security of the State.

Inspection

10. I referred at para. 3 above to the locations which I attended on 24th June, 2022.

11. At each location all files containing applications to intercept postal packets and/or telecommunications messages were made available to me on request. Given the number of files it was not possible to check each individually, so I selected a number of files randomly for close examination. In each case I found the documentation to be in order. Any questions or issues I raised concerning the documentation and its contents were answered to my satisfaction. All officers and personnel involved were entirely cooperative with me in the exercise of my functions.

12. I examined in detail the internal procedures followed by both the Gardaí and the Permanent Defence Forces for making an application under the said Acts. I believe that these procedures are appropriate and that warrants for interceptions are only given when these procedures have been followed. Warrants for interceptions are reviewed regularly. I am also satisfied, having considered a number of files, that interceptions only remain in place for so long as is necessary. When no longer necessary, the warrants are cancelled without delay.

13. I am satisfied that the officers and personnel involved are fully conversant with, and have due regard to, the privacy and other rights of those whose communications (including postal communications) are being intercepted. I am also satisfied that the said officers and personnel understand the nature and purpose of the function which they are entrusted with, and that the powers under the said Acts are exercised proportionately and responsibly.

14. Over the past year there has been a variation of the number of occasions when the powers under the said Acts were used compared to the previous twelve months. In fact, there has been a reduction and I am satisfied with the explanation for this.

Matters of concern

15. In my reports of previous years, I have made comments on a number of matters of concern. I refer to these matters again in this report: -

- (i) The issues arising from the recent judgment of the European Court of Justice concerning the legality of s. 6 (1) (a) of the 2011 Act, which provides for the disclosure of data by a service provider required for "*the prevention, detection, investigation or prosecution of a serious offence*" will have to be addressed in new legislation; and
- (ii) As I have referred to, there are very serious threats to the security of the State from persons or groups organised within and outside the State. These threats have increased in the past year. The provisions made in the 1993 Act for the interception of telecommunications are seriously out of date with definitions being relied on that are contained in legislation that is close to 40 years old. Though these interceptions still have use, it is necessary, in order to deal with crime and protect the security of the State, that provision is made by statute for there to be access to the transfer of data in encrypted form. Updated legislation to provide for such is urgently required and long overdue. A failure to enact such legislation will inevitably have serious consequences for the security of the State and its ability to detect and prevent crime.

16. Any new legislation will have to provide the necessary protections and safeguards for those whose communications are being intercepted.

17. The above issues should be addressed as a matter of urgency.

Mr. Justice Charles Meenan

27th June, 2022.