

**General Scheme of the
Criminal Justice (Search Powers) Bill 2012**

Arrangement of heads

Head 1 Short title

Head 2 Amendment of section 29 of the Offences against the State Act 1939

Head 3 Amendment of section 26 of the Misuse of Drugs Act 1977

Head 4 Amendment of section 8 of the Criminal Justice (Drug Trafficking) Act 1996

Head 1 Short title

Provide that—

This Act may be cited as the Criminal Justice (Search Powers) Act 2012.

Head 2 Amendment of section 29 of the Offences against the State Act 1939

Provide that section 29 is substituted by the following—

“(1) An application under this section for a search warrant may be made to a judge assigned to any district court district. The application shall include details of previous search warrant applications (if any) made in respect of the place to which the current application relates.

(2) If a judge of the District Court is satisfied by information on oath by a member of the Garda Síochána, or if a member of the Garda Síochána not below the rank of superintendent is satisfied, that there are reasonable grounds for suspecting that evidence of or relating to the commission or intended commission of:

- (a) an offence under this Act,
- (b) an offence under the Criminal Law Act 1976,
- (c) an offence which is for the time being a scheduled offence for the purposes of Part V of this Act, or
- (d) treason

is to be found in any place, he or she may issue to a member of the Garda Síochána not below the rank of sergeant a search warrant under this section in relation to such place.

(3) A member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied—

- (a) that the search warrant is necessary for the proper investigation of an offence, and
- (b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for the issue of the warrant.

(4) A member of the Garda Síochána who is in charge of or involved in the investigation of the offence concerned shall not issue a search warrant under this section.

(5) A warrant under this section shall be expressed, and shall operate, to authorise the member of the Garda Síochána named in the warrant, accompanied by any members of the Garda Síochána or the Defence Forces –

- (a) to enter, within one week of the date of issue of the warrant, and if necessary by the use of reasonable force, any place named in the warrant,

(b) to search it and any persons found at that place, and

(c) to seize and to retain anything found at that place, or anything found in the possession of a person present at that place at the time of the search, which the said member reasonably believes to be evidence of or relating to the commission or intended commission of an offence.

(6) A search warrant issued by a member of the Garda Síochána under this section shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

(7) A member of the Garda Síochána or the Defence Forces acting under the authority of a warrant under this section may—

(a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct that member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(8) A person who obstructs or attempts to obstruct any member of the Garda Síochána or of the Defence Forces acting under the authority of a warrant under this section, who fails to comply with a requirement under paragraph (a) of subsection (7), or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable

(a) on summary conviction to a class A fine or to imprisonment for a period not exceeding 12 months or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(9) The power to issue a warrant under this section is without prejudice to any other power conferred by statute for the issue of a warrant for the search of any place or person.

(10) A member who issues a search warrant under this section shall record in writing the grounds on which the warrant was issued (including the circumstances of urgency giving rise to the need for the immediate issue of the search warrant which rendered it impracticable to apply to a judge of the District Court) as soon as reasonably practicable after issuing the warrant.

(11) Any reference in subsection (2) of this section to an offence includes a reference to attempting or conspiring to commit the offence.

(12) In this section “place” includes a building or part of a building, a vehicle, a vessel, an aircraft or hovercraft or any other place whatsoever.

Head 3 Amendment of section 26 of the Misuse of Drugs Act 1977

Provide that section 26 is amended by the insertion of the following after subsection (1):

“(1A) An application under this section for a search warrant may be made to a judge assigned to any district court district. The application shall include details of previous search warrant applications (if any) made in respect of the place to which the current application relates.”

Head 4 Amendment of section 8 of the Criminal Justice (Drug Trafficking) Act 1996

(1) Provide that section 8 is amended by the insertion of the following after subsection (2):

“(2A) A member of the Garda Síochána who is in charge of or involved in the investigation of the offence concerned shall not issue a search warrant under the said section 26.

(2B) A member who issues a search warrant under the said section 26 shall record in writing the grounds on which the warrant was issued (including the circumstances of urgency giving rise to the need for the immediate issue of the search warrant which rendered it impracticable to apply to a judge of the District Court or a Peace Commissioner) as soon as reasonably practicable after issuing the warrant.”

(2) This head shall not affect the validity of a warrant issued under section 26 of the Misuse of Drugs Act 1977 before the commencement of this head and such a warrant shall continue in force in accordance with its terms after such commencement.