

**General Scheme of the  
Criminal Procedure Bill 2009**

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**PART 1                      Preliminary and general**

**Head 1              Short title and commencement**

Provide that -

- (1)    This Act may be cited as the Criminal Procedure Act 2009.
  
- (2)    This Act shall come into operation on such day or days as, by order or orders, the Minister may appoint.

## **Head 2      Definitions**

“Minister” means the Minister for Justice, Equality and Law Reform

### **Head 3       Repeals**

Provide that

Section 5 of the Criminal Justice Act 1993 is repealed.

## **Head 4        Expenses**

Provide that

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

## **PART 2      Victims of crime**

### **Head 5      Effects of certain offences on victims**

Provide that

(1) Before imposing a sentence on a person for an offence to which this head applies, a court shall take into account and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.

(2) This head applies to—

( a ) a sexual offence within the meaning of the Criminal Evidence Act, 1992,

( b ) an offence involving violence or the threat of violence to a person, and

( c ) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in *paragraph (a)* or ( b ).

(3) Before imposing a sentence on a person for an offence to which this head applies, the Court shall, upon application by the person in respect of whom the offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person upon being requested to do so.

(4) The fact that the person in respect of whom the offence was committed does not make an application to the Court under subsection (3) shall not of itself give rise to an inference that the offence caused little or no harm to such person.



(5) (a) For the purposes of subhead (1) the “person in respect of whom the offence was committed” includes, where, as a result of the offence, that person has died, is ill or is otherwise incapacitated, the family members of that person.

(b) For the purposes of subhead (3) “the person in respect of whom the offence was committed” includes

(i) where such person is a child and unable to give evidence, a parent, guardian or another person acting in loco parentis in respect of that child; and

(ii) where such person has a mental disorder (not resulting from the offence concerned) and is unable to give evidence, a family member or guardian in respect of that person.

(6)(a) Where, as a result of the offence, the person in respect of whom the offence was committed has died, is ill or is otherwise incapacitated, subhead (3) shall apply to the family members of such person subject to (b) and (c).

(b) Where more than one family member seeks to avail of subhead (3) a court may direct the family members to nominate one or more family members for the purpose of subhead (3).

(c) Where under (b) a court directs the family members to nominate one or more family members for the purpose of subhead (3) and the family members are unable to reach agreement, the Court may, having regard to the degree of relationship between the family members and the person in respect of whom the offence was committed, nominate one or more family members as it considers appropriate.

(7)(a) Without prejudice to any other of its powers, a court may, in the interests of justice, direct that information relating to the evidence given under subhead (3) or a part of it shall not be published in a written publication available to the public or be broadcast.

(b) If any matter is published or broadcast in contravention of (a), the following persons, namely—

( i ) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

( ii ) in the case of any other publication, the person who publishes it, and

(iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper, shall be guilty of an offence and shall be liable—

(I) on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or

(II) on conviction on indictment, to a fine not exceeding €25,000 or to imprisonment for a term not exceeding 3 years or to both.

(c) Where an offence under this head has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(d) Where the affairs of a body corporate are managed by its members, (c) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(8) In this head

"a broadcast" means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

“child” means a person less than 18 years of age;

“family member” in relation to the person against whom an offence was committed (including a person with a mental disorder) means

- (i) a spouse or de facto partner (whether or not of the same sex as the person),
- (ii) a civil partner [within the meaning of the Civil Partnership Bill],
- (iii) a child, sibling, parent, grandparent, uncle, aunt, niece or nephew,
- (iv) a person who is acting in loco parentis in respect of that person,
- (v) any dependant of that person,
- (vi) any person whom the court considers to have had a close connection with that person.

"written publication" includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings;

“guardian” in relation to a child, has the meaning it has in section 3(1) of the Children Act 2001;

“guardian” in relation to a person with a mental disorder means any legal guardian of the person;

“mental disorder” includes a mental illness, mental disability, dementia or any disease of the mind.

## **Head 6      Application of the Criminal Evidence Act 1992**

Provide that

The provisions of sections 13 and 14 of the Criminal Evidence Act 1992 shall apply with any necessary modifications to evidence given under head 5 by a victim who is a child or who has a mental disorder.

## **PART 3    Exceptions to the rule against double jeopardy**

### **Head 7        Definitions for this Part**

(1) “Court” means the Court of Criminal Appeal;

“Director” means the Director of Public Prosecutions.

(2) References to “acquittal” include an acquittal by a jury and an acquittal by a jury granted on the direction of a trial judge. “person who has been acquitted” shall be construed accordingly.

## **Head 8      Application of this Chapter**

Provide that-

- (1) This Chapter applies to any person who has been charged after the commencement of this Chapter and acquitted of a relevant offence either:
  - (a) on indictment in the State;
  - (b) on appeal against a conviction or verdict on indictment in the State;or
  - (c) on appeal from such a decision on an appeal.
- (2) A person who has been acquitted of a relevant offence in proceedings mentioned in subhead (1) shall be considered for the purposes of that subhead as also acquitted of any relevant offence of which he or she could have been convicted in the proceedings because of the first-mentioned offence being charged in the indictment, except an offence of which he or she has been convicted.
- (3) In this Chapter “relevant offence” means an offence an offence specified in the schedule.

## Schedule

1. Murder (including murder under section 4 of the Criminal Justice Act 1990)

2. Manslaughter

3. Treason

*Genocide, crimes against humanity, war crimes and ancillary offences*

4. An offence under sections 7 and 8 of the International Criminal Court Act 2006 (subject to section 10 of that Act)

*Torture*

5. An offence under section 2(1) of the Criminal Justice (United Nations Convention Against Torture) Act 2000 (Offence of Torture by a Public Official)

6. An offence under section 2(2) of the Criminal Justice (United Nations Convention Against Torture) Act 2000 (Offence of Torture Instigated by a Public Official)

7. An offence under section 3(a) of the Criminal Justice (United Nations Convention Against Torture) Act 2000 (Attempt or Conspiracy to Commit Torture)

8. An offence under section 3(b) of the Criminal Justice (United Nations Convention Against Torture Act) 2000 (*Obstructing Prosecution of Another*)

## *Sexual Offences*

### 9. Rape

10. An offence under section 3 (1) of the Criminal Law (Rape) (Amendment) Act 1990 (Aggravated Sexual Assault)

11. Rape under section 4 of the Criminal Law (Rape)(Amendment) Act 1990

12. An offence under section 2 (1) of the Criminal Law (Sexual Offences) Act 2006 (*Defilement of child under 15 years of age*)

13. An offence under section 2 (2) of the Criminal Law (Sexual Offences) Act 2006 (*Attempt*)

14. An offence under section 1 of the Punishment of Incest Act 1908 (Incest by males)

## *Offences against the person*

15. An offence under section 4 of the Non-Fatal Offences Against The Person Act 1997 (Causing serious harm)

16. An offence under section 6 (5) of the Non-Fatal Offences Against The Person Act 1997 (Syringe offences)

17. An offence under section 8(2) of the Non-Fatal Offences Against the Person Act 1997 (Placing or abandoning syringe)



18. An offence under section 15 (1) of the Non-Fatal Offences Against the Person Act 1997 (False Imprisonment)

### *Trafficking*

19. An offence under section 3 (1) of the Child Trafficking and Pornography Act 1998 (Trafficking, taking etc for the purposes of sexual exploitation)

20. An offence under section 2 of the Criminal Law (Human Trafficking) Act 2008 (Trafficking etc of children)

21. An offence under section 4 of the Criminal Law (Human Trafficking) Act 2008 (Trafficking of Persons other than Children).

### *Offences against the State*

22. An offence under section 6 of the Offences Against the State Act (Amendment) Act 1998 (*Directing an unlawful organisation*)

### *Terrorist Offences*

23. An offence under section 9 (1) of the Criminal Justice (Terrorist Offences) Act 2005 (Hostage Taking)

24. An offence under section 9 (2) of the Criminal Justice (Terrorist Offences) Act 2005 (Attempted Hostage Taking)

25. An offence under section 10 (1) of the Criminal Justice (Terrorist Offences) Act 2005 (Terrorist Bombing)

26. An offence under section 10 (2) of the Criminal Justice (Terrorist Offences) Act 2005 (Terrorist Bombing Causing Major Economic Loss)

27. An offence under section 10 (3) of the Criminal Justice (Terrorist Offences) Act 2005 (Attempted Bombing)

#### *Possession of Drugs for Unlawful Sale and Supply*

28. An offence under section 15 (1), 15A and 15B of the Misuse of Drugs Act 1977.

#### *Firearms*

29. An offence under section 15 of the Firearms Act 1925 (Possession of a firearm with intent to endanger life)

30. An offence under section 27 of the Firearms Act 1964 (Prohibition of use of firearms to resist arrest or aid escape)

#### *Explosive Substances*

31. An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or damage property).

#### *Damaging Property*

32. An offence of arson under section 2(1) or (3) of the Criminal Damage Act 1991 (damaging property) and an offence under section 2(2) of the same Act (whether arson or not)

*Robbery and burglary*

33. An offence under section 13(1) of the Theft and Fraud Offences Act 2001 (Aggravated Burglary)]

34. An offence under section 14(1) of the Theft and Fraud Offences Act 2001 (Robbery)

## **Head 9        Application for re-trial of previously acquitted person where new and compelling evidence has become available**

Provide that-

(1) The Director may apply to the Court for an order

- (a) quashing a person's acquittal, and
- (b) ordering him or her to be retried for the relevant offence.

(2) The Director may proceed with an application under subhead (1) only where –

- (a) there is evidence to meet the requirements in head 10;
- (b) it is in the public interest for the application to proceed.

(3) No more than one application may be made under subhead (1) in relation to an acquittal (including an acquittal following a re-trial ordered under head 10).

(4) Section 6 of the Prosecution of Offences Act 1974 (which prohibits certain communications in relation to criminal proceedings), shall apply, with any necessary modifications, to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this head as it applies to such communications made for the purpose of making a decision to withdraw or not initiate criminal proceedings or any particular charge in criminal proceedings.

## **Head 10      Determination by Court**

Provide that-

(1) Where an application is made under Head 9(1) and the Court is satisfied that

- (a) there is new and compelling evidence against the acquitted person in relation to the relevant offence, and
- (b) it is in all the circumstances in the interests of justice that the application should be granted

the Court shall make the order sought otherwise it shall dismiss the application.

(2) The reference to new evidence in subhead (1) is to evidence that

- (a) was not adduced in the proceedings in which the person was acquitted (nor appeal proceedings to which the original proceedings related); and
- (b) could not, with the exercise of reasonable diligence, have been adduced in those proceedings.

(3) The reference to compelling evidence in subhead (1) is to evidence that

- (i) is reliable,
- (ii) is substantial, and
- (iii) implicates the acquitted person with a high degree of probability in the commission of the relevant offence.

## **Head 11      Approval of District Court judge required for exercise of certain powers in relation to an acquitted person**

Provide that-

- (1) This head applies to the exercise by the Garda Síochána of certain investigative powers in relation to a person who has been acquitted of a relevant offence in connection with the investigation of that offence.
- (2) Where a member of the Garda Síochána not below the rank of superintendent has reasonable grounds for believing that information obtained, or likely to be obtained as a result of the exercise of certain investigative powers (exercised pursuant to statutory authority or otherwise) in relation to a person who has been acquitted of a relevant offence will tend to implicate that person in the commission of the offence concerned, he or she may exercise or cause to be exercised those powers in respect of that person (whether with or without the consent of the person) only with the approval of a judge of the District Court.
- (3) The judge of the District Court may on the application of the member referred to in (2), give the necessary approval only where he or she is satisfied that there reasonable grounds for believing that there is, or that a further investigation is likely to reveal, or confirm the existence of new and compelling evidence to implicate the acquitted person in the commission of the relevant offence.
- (4) The powers referred to in subhead (2) are:
  - (a) questioning, arresting, detaining, fingerprinting, photographing or sampling (including conducting analysis of a sample) the acquitted person,
  - (b) searching the acquitted person or any property belonging to or occupied by his or her; and
  - (c) seizing any thing belonging to or in the possession of the acquitted person.

## **Chapter 2 Re-trial of a previously acquitted person where acquittal is tainted**

### **Head 12 Application of this Chapter**

Provide that-

(1) This Chapter applies to:

- (a) any person who has been charged after the commencement of this Chapter and acquitted of an offence on indictment in the State including on appeal against a conviction or verdict on indictment in the State, or on appeal from such a decision on an appeal; and
- (b) that person, or another person, has been convicted of an offence against the administration of justice relating to the trial which resulted in the acquittal concerned.

(2) A person who has been acquitted of an offence in proceedings mentioned in subhead (1)(a) shall be considered for the purposes of that subhead as also acquitted of any offence of which he or she could have been convicted in the proceedings because of the first-mentioned offence being charged except an offence of which he or she has been convicted.

(3) For the purposes of this Chapter “an offence against the administration of justice” means

- (a) an offence under section 41 of the Criminal Justice Act 1999 (intimidation etc of witnesses, jurors and others);
- (b) bribery of, or any other form of corruption or interference with a juror, witness (or potential witness), judge or court official;
- (c) attempting to pervert the course of justice;
- (d) perjury;
- (e) conspiring or inciting another person to commit any of the offences mentioned in (a) to (d);

### **Head 13      Application for re-trial of previously acquitted person where acquittal tainted**

Provide that-

(1) The Director may apply to the Court for an order

- (a) quashing a person's acquittal, and
- (b) ordering him or her to be retried for the offence.

(2) The Director may proceed with an application under subhead (1) only where—

- (a) there is evidence to meet the requirements in head 14
- (b) no appeal or application in relation to the administration of justice offence is pending before any court;
- (c) it is in the public interest for the application to proceed.

(3) No more than one application may be made under subhead (1) in relation to an acquittal (including an acquittal following a re-trial ordered under head 14.

(4) Section 6 of the Prosecution of Offences Act 1974 (which prohibits certain communications in relation to criminal proceedings), shall apply, with any necessary modifications, to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this Head as it applies to such communications made for the purpose of making a decision to withdraw or not initiate criminal proceedings or any particular charge in criminal proceedings.



## **Head 14      Determination by Court**

Provide that-

Where an application is made under head 13(1) and the Court is satisfied that

- (a) it is more likely than not that the commission of the administration of justice offence affected the result of the trial,
- (b) no appeal or application in relation to the administration of justice offence is pending before any Court; and
- (c) it is in all the circumstances in the interests of justice that the application should be granted

the Court shall make the order sought otherwise it shall dismiss the application.

## **Chapter 3 Common provisions**

### **Head 15 Interests of justice**

Provide that

When considering under heads 10 or 14 whether it is in all the circumstances in the interests of justice that the application sought should be granted the Court shall take into account

- (a) the likelihood that the re-trial could be conducted fairly;
- (b) the amount of time that has passed since the commission of the offence;
- (c) the interests of any victim of the offence alleged to have been committed;
- (d) any other matters which it considers relevant.

## **Head 16      Procedure**

Provide that-

- (1) Where the Director makes an application to the Court under head 9 or 13 he or she shall as soon as practicable after the application is made, give notice of it to the acquitted person; or where he or she is of the opinion that the acquitted person is likely to abscond request that the application be heard on an ex parte basis.
- (2) If on an application under head 9 or 13 the acquitted person concerned applies to be heard by the Court, an order shall not be made under head 10 or 14 as the case may be, unless a reasonable opportunity has been given to the person to be heard.
- (3) If the acquitted person wishes to be represented in proceedings under this Part and a legal aid (Court of Criminal Appeal) certificate is granted under subhead (4) of this head or, is deemed to be granted under subhead (5) of this head, in respect of him or her, he or she shall be entitled to free legal aid in the preparation and presentation of any argument that he or she wishes to make to the Court or to have a solicitor and counsel assigned to him or her for that purpose in a manner prescribed by regulations under section 10 of the Criminal Justice (Legal Aid) Act 1962.
- (4) The acquitted person may, in relation to proceedings under this Part, apply for a legal aid (Court of Criminal Appeal) certificate to the Court either
  - (a) by letter addressed to the registrar of the Court setting out the facts of the case and the grounds of the application, or
  - (b) to the Court itself,

and the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid.

(5) If a legal aid certificate was granted under the Criminal Justice (Legal Aid) Act 1962 in respect of the acquitted person in relation to the earlier trial for the relevant offence concerned, a legal aid (Court of Criminal Appeal) certificate shall be deemed to have been granted in respect of him or her in relation to the proceedings under this Part.

(6) (a) Subject to this subhead and any other enactment, proceedings under this Part shall be conducted in open court.

(b) Where the Court conducting a proceeding under this Part is satisfied, because of the nature or circumstances of the case or otherwise in the interests of justice, that it is desirable to do so, it may exclude from the Court during the proceeding—

(i) the public or any portion of the public, or

(ii) any particular person or persons,

except bona fide representatives of the Press.

(c) Paragraph (a) is without prejudice to the right of a parent, relative or friend of the acquitted person or of an injured party to remain in court in any case to which section 20(4) of the Criminal Justice Act, 1951 , or section 6 of the Criminal Law (Rape) Act, 1981 (as substituted by section 11 of the Criminal Law (Rape) (Amendment) Act, 1990 ) applies.

(7) No person shall publish or broadcast or cause to be published or broadcast any information about a proceeding under this Part other than—

(a) a statement of—

(i) the fact that the proceeding has been brought by the Director in relation to a named acquitted person and a specified offence, and

(ii) any decision resulting from the proceeding.

(b) If, on application by the Director, it appears to the Court that a person has contravened subhead (7)(a), the Court may certify to that effect to the High Court.

(c) On receiving a certificate under subhead (b), the High Court may—

(i) inquire into the matter to which the certificate relates, and

(ii) after hearing any witnesses and after considering any statement that may be offered in defence of the person alleged to have

contravened subhead (7)(a), punish, or take steps for the punishment of, that person in the like manner as if he had been guilty of contempt of the Court.

(d) This subhead shall not affect—

(i) the operation of any other enactment that imposes further restrictions on the extent to which information relating to court proceedings may be published or broadcast, or (ii) any power conferred on a court by such an enactment to make an order authorising the publication or broadcast of such information.

(e) In this subhead—

‘broadcast’ means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether or not such communications, sounds, signs, visual images or signals are actually received; ‘publish’ means publish to the public or a portion of the public.

(8) (a) For the purposes of making a determination under head 10 or 14, the Court may,

- (i) order the production of any document, exhibit or other thing connected with the proceedings;
- (ii) order any witness who would be a compellable witness in proceedings pursuant to an order made on the application to attend for examination and be examined before the Court.
- (iii) receive the evidence, if tendered, of any witness,
- (iv) generally make such order as may be necessary for the purpose of doing justice in the case before the Court.

(b) For the purposes of making a determination under head 14, the Court may order the admission into evidence of the transcript of the trial in relation to the offence against the administration of justice.

(9) An order under head 10 or 14 may be granted subject to

- (a) any conditions that the Court considers are required to safeguard the fairness of the retrial;
- (b) any other directions as to the conduct of the retrial that the Court considers necessary in the interests of justice.

(10) A notice under subhead (1) shall be addressed to the acquitted person concerned by name, and may be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides;
- (c) by sending it by post in a prepaid registered envelope to the address at which the person ordinarily resides.

(11) For the purposes of this Part, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.

## **Head 17      Effect of order for retrial and conduct of retrial**

Provide that-

- (1) Where the Court makes an order under head 10 or head 14 the acquitted person concerned may be indicted and tried for the relevant offence and, if found guilty, sentenced.
- (2) In a case to which subhead (1) applies the Court shall (unless the acquitted person is already in custody):
  - (a) order that the acquitted person be detained in custody or admitted to bail pending the re-trial on such terms as the Court thinks fit, or
  - (b) where the acquitted person is not present issue a warrant for his or her arrest;and the provisions of any enactment that enable a defendant who successfully appeals against a conviction but in respect to whom a retrial is ordered, to be arrested, brought before a Court, remanded in custody, or released on bail, pending his or her retrial, apply with any necessary modifications to the acquitted person.
- (3) Where the Court makes an order under head 10 or head 14 ordering a re-trial the indictment shall be preferred as directed by the Court.
- (4) Where the Court makes an order under head 10 or head 14 the trial court shall ensure that the trial takes place as expeditiously as reasonably possible.
- (5) An indictment under subhead (3) may relate to more than one offence, or more than one person, and may relate to an offence which, or a person who, is not the subject of an order under head 10 or head 14 as the case may be.

- (6) At the retrial of an acquitted person, the prosecution is not entitled to refer to the fact that the Court made an order under head 10 or head 14 as the case may be.



## **Head 18      Other appeal or review rights not affected**

Provide that-

Nothing in this Part affects a right of appeal or review under this or any other Act or law.

## **PART 4**

## **Appeals**

### **Head 19      “With prejudice” prosecution appeal on question of law to Supreme Court.**

Provide that

- (1) Where a person tried on indictment is acquitted (whether in respect of the whole or part of the indictment) the Director of Public Prosecutions may appeal the verdict or decision in favour of the acquitted person to the Supreme Court on a question of law arising during the trial.
- (2) On the hearing of an appeal under subhead (1) the Supreme Court may:
  - (a) affirm the acquittal (and may do so notwithstanding that it is of the opinion that a point raised in the appeal might be decided in favour of the appellant, if it considers that it is in the interests of justice to do so); or
  - (b) quash the acquittal and order the acquitted person to be re-tried for the offence.
- (3) The Supreme Court shall, in an appeal under subhead (1) hear argument—
  - (a) by, or by counsel on behalf of, the Director of Public Prosecutions,
  - (b) if the acquitted person so wishes, by counsel on his or her behalf or, with the leave of the Court, by the acquitted person himself or herself, and
  - (c) if counsel are assigned under subsection (4), such counsel.

- (4) The Supreme Court shall assign counsel to argue in support of the decision if—
- (a) the acquitted person waives his or her right to be represented or heard under subhead (3)(b), or
  - (b) notwithstanding the fact that the acquitted person exercises his or her right to be represented or heard under subhead (3)(b), the Court considers it desirable in the public interest to do so.
- (5) If the acquitted person wishes to be represented in proceedings before the Supreme Court under this head and a legal aid (Supreme Court) certificate is granted under subhead (6), or is deemed to have been granted under subhead (7), in respect of him or her, he or she shall be entitled to free legal aid in the preparation and presentation of any argument that he or she wishes to make to the Court and to have a solicitor and counsel assigned to him or her for that purpose in the manner prescribed by regulations under section 10 of the Criminal Justice (Legal Aid) Act 1962.
- (6) The acquitted person may, in relation to proceedings under this head, apply for a legal aid (Supreme Court) certificate to the Supreme Court either
- (v) by letter addressed to the registrar of the Court setting out the facts of the case and the grounds of the application, or
  - (vi) to the Court itself,

and the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid.

- (7) If a legal aid certificate was granted under the Criminal Justice (legal Aid) Act 1962 in respect of the acquitted person in relation to the earlier trial for the offence concerned, a legal aid (Supreme Court) Certificate shall be deemed to have been granted in respect of him or her in relation to the proceedings under this head.

- (8) In this head 'legal aid (Supreme Court) certificate' has the meaning it has in the Criminal Justice (Legal Aid) Act 1962.
- (9) A jury verdict to acquit on the merits shall not give rise to an appeal under this head.
- (10) For the purposes of offences where the prosecution is initiated by the Attorney General references to the Director of Public Prosecutions in this head and head 20 shall be read as meaning Attorney General.
- (11) The time limit to apply to the appeal referred to in (1) shall be fixed by Rules of Court.

## **Head 20      Re-trial**

Provide that

- (1) Where an acquitted person is ordered under head 19 to be re-tried for an offence he or she may, be again indicted and tried and, if found guilty, sentenced for that offence.
- (2) In a case to which subhead (1) relates the Supreme Court shall (unless the acquitted person is already in custody):
  - (a) order that the acquitted person be detained in custody, or detained in custody or admitted to bail pending the re-trial on such terms as the Court thinks fit,
  - (b) where the acquitted person is not present issue a warrant for his or her arrest,

and the provisions of any enactment that enable a defendant who successfully appeals against a conviction but in respect to whom a retrial is ordered, to be arrested, brought before a court, remanded in custody, or released on bail, pending his or her retrial, apply with any necessary modifications to the acquitted person.

- (3) Where the Supreme Court makes an order under head 19 ordering a re-trial the indictment shall be preferred as directed by that Court.
- (4) Where the Court makes an order under head 19 the trial court shall ensure that the trial takes place as expeditiously as reasonably possible.
- (5) A legal aid certificate which was granted in relation to the proceedings under head 19 or in the case of an acquitted person who waived his or her right to be represented or heard under head 19, a legal aid certificate which was granted in relation to his or her original trial, shall have effect as if it had been granted also in relation to a re-trial under this head.
- (6) In a case to which subhead (1) relates the Supreme Court may where a legal aid certificate does not apply in respect thereof, order that the

costs of the appeal and of the new trial, in whole or in part, be paid by the State.

**Head 21        “With prejudice” prosecution appeal against order of the Court of Criminal Appeal under section 3(1)(b) of the Criminal Procedure Act 1993**

Provide that

- (1) Where the Court of Criminal Appeal on the hearing of an appeal against conviction of an offence quashes the conviction but makes no order for the re-trial of the applicant the Director of Public Prosecutions may appeal the decision of the Court not to order a re-trial to the Supreme Court on a question of law.
- (2) The provisions of head 19 and head 20 apply with any necessary modifications to the appeal referred to in subhead (1) and any re-trial should it be ordered by the Supreme Court.
- (3) The time limit to apply to the appeal referred to in (1) shall be fixed by Rules of Court.

## **Head 22      Amendment to section 31 of The Court of Justice Act 1924**

Provide that section 31 is amended by

the deletion of the words from “under the following conditions” to “grant leave to appeal”.



## **Head 23 Amendment of section 29 of the Courts of Justice Act 1924**

Provide that

Section 29 of the Courts of Justice Act 1924 is amended by the insertion of the following after section 22 (2):

“(2A)(a) A person who, having appealed a matter to the Court of Criminal Appeal, and who has, in a determination by that court on the matter, been granted a retrial, may, without prejudice to the decision to grant a retrial, appeal to the Supreme Court in respect of a matter raised by him or her in his or her appeal to the Court of Criminal Appeal and upon which that Court did not make a determination, the said matter being one that is necessary to the conduct of his or her defence in the retrial.

(b) The appeal may be brought only where the Court of Criminal Appeal or the Attorney General in any case or, if he or she is the prosecuting authority in the matter, the Director of Public Prosecutions certifies that the matter involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court.”

## **Head 24      Other appeal or review rights not affected**

Provide that-

Nothing in this Part affects a right of appeal or review under this or any other Act or law.

## **PART 5      The Giving of Evidence**

### **Head 25 Cross examination of an accused person as to evidence of character**

1. In the Criminal Justice (Evidence) Act 1924, substitute the following for Section 1(f)(ii)
  - (ii) he has personally or by his advocate asked questions of any witness with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of any witness; or
2. In the Criminal Justice (Evidence) Act 1924, insert the following as Section 1(f)(iii) of the Criminal Justice (Evidence) Act 1924.
  - (iii) he has personally or by his advocate asked questions of any witness or drawn conclusions from or made inferences based on evidence given by any witness with a view to making imputations on the character of victims in the case who are deceased or are incapacitated to the extent that they are unable to give evidence; or,
3. In the Criminal Justice (Evidence) Act 1924, insert the following Section 1(f)(iv).
  - (iv) he has given evidence against any other person charged with the same offence:
4. In the Criminal Justice (Evidence) Act 1924, insert the following Section 1A
  - 1A
    1. A person charged with an offence and called as a witness who proposes to adduce evidence or to make imputations against the character of victims in the case who are deceased or are incapacitated to the extent that they are unable to give evidence, shall not, either personally or by his advocate, be permitted by the court to do so, unless-
      - (a) The person so charged, either personally or by his advocate, has given the court a period of notification of not less than seven days, of the intention to make such imputations, or

- (b) The person so charged, either personally or by his advocate, has been granted leave by the court to make such imputations on foot of a request for the leave of the court to make such imputations, citing the reasons why it is not possible to give such notice as required under paragraph (a) of this section.
- 2. Where an accused person has been granted leave by the court under this section, *subsection (f) of section 1* shall not apply.

## Head 26      Character Evidence of Accused

Provide that the Criminal Justice (Evidence) Act 1924 is amended by the insertion of a new Section 1B.

1. In any proceedings against a person for an offence, this section shall apply where the accused person was not called as a witness but where –
  - (a) the nature or conduct of the defence is such as to involve imputations by, on behalf of or with the consent of the accused person, on the character of victims in the case who are deceased or are incapacitated to the extent that they are unable to give evidence; or,
  - (b) the defence has asked questions of any witness with a view to establishing the good character of the accused, or the nature or conduct of the defence is such as to involve imputations on the character of [the prosecutor or] the witnesses.
2. Where subsection (1) applies, evidence may be called by the prosecution showing, as the case may be;
  - a. that the accused person has been convicted of such other offences that have a probative value with respect to the offence with which he is charged.
  - b. evidence regarding the good character of deceased or incapacitated victims in the case where the nature or conduct of the defence is to involve imputations on the character of those victims.
3. Where the defence intends to adduce evidence or to make imputations against the character of victims in the case who are deceased or are incapacitated to the extent that they are unable to give evidence, the defence shall not be permitted by the court to do so, unless-
  - (a) The person so charged, either personally or by his advocate, has given the court a period of notification of not less than seven days, of the intention to make such imputations, or
  - (b) The person so charged, either personally or by his advocate, has been granted leave by the court to make such imputations on foot of a request for the leave of the court to make such imputations, citing the reasons why it is not possible to give such notice as required under paragraph (a) of this section.
4. Where the defence has been granted leave by the court under *subsection 3* , *subsection 2* shall apply.

## Head 27      Defence Notice of Expert Evidence

1. The accused shall not call an expert witness or adduce expert evidence except in accordance with this section.
2. Subject to subhead 3, where an accused person proposes to adduce expert evidence, whether or not it is in response to such evidence presented by the prosecution, he shall give notice at least 10 days prior to the start of the trial to the prosecution of particulars of the expert evidence which is to be brought before the court.
3. (a) The accused shall not call any expert evidence under *subsection (2)* unless the notice under that subsection includes the name and address of the expert witness as well as (unless *paragraph (b)* of this subsection applies) any report, including details of any analysis carried out by or on behalf of or relied upon by the said witness, or any summary findings of the expert witnesses.

(b) If the report or summary findings of the expert witnesses, as the case may be, is not included in that notice, the court where it is satisfied that the accused, before giving the notice, took all reasonable steps to secure that information, may grant leave to bring that evidence.

(c) Where the court grants leave under *paragraph (b)* of this subsection, the prosecution shall be given reasonable opportunity to consider the report before the expert witness gives the evidence.

(d) The court may also grant leave on an application by the defence, to introduce expert evidence where the court is satisfied that it was not reasonably possible to observe the notice periods stipulated in this section or where it was not reasonably possible to have anticipated that the evidence to which it proposes to respond would have been presented. The court shall hear the prosecution before granting leave and, if granting leave, it shall include such terms as are reasonable to ensure that the prosecution is given reasonable opportunity to consider the evidence which the defence proposes to present.
4. Any notice purporting to be given under this section on behalf of the accused by his legal representative shall, unless the contrary is proved, be deemed to be given with the authority of the accused.
5. Any notice referred to in this section shall be given in writing to the legal representative for the prosecution and may be given by delivering it to him or by leaving it at his office or by sending it to him by registered post at his office.
6. (a) An expert witness called by the defence in accordance with this section may be cross – examined by or on behalf of the prosecution.

(b) The prosecution may call a witness to give evidence on the evidence of any expert witness called by the defence in accordance with this section.

7. In this section -

“expert evidence” means evidence in respect of matters that call for expertise in analysis and interpretation and  
an “expert witness” is one who purports to have the necessary expertise for the purposes of the said analysis and interpretation.

## **Head 28      Notice for Evidential Use where there is Intention to Dispose of Object, etc.**

1. The prosecution may serve, in accordance with this section and in accordance with such requirements as may be specified in any regulations made under *subhead 14*, on the defendant a statement relating to an article.

In this Head an 'article' includes a substance, document or thing [which is being retained as evidence in criminal proceedings].

2. The statement shall indicate that the prosecution intends to enter it in evidence and that it is proposed (but only if *subhead 5(i)* applies) to either return the article to its owner or that it is to be destroyed, whichever is appropriate.
3. The statement shall contain –
  - (i) a description of the article,
  - (ii) details of its relevance to the proceedings,
  - (iii) it shall be accompanied by one or more photographs of the article,
  - (iv) it shall be accompanied by any statements which the prosecution proposes to enter in evidence arising from the analysis of the article, including analysis of goods, substances or materials found thereon or therein.
4. The statement shall be provided by the prosecution to the accused or to his legal representative no later than at a time in advance of the commencement of the trial as shall be fixed in the regulations under *subhead 14*.
5. The accused or his legal representatives shall reply in writing to the prosecution within such time as shall be fixed by the regulations under *subhead 14* and shall indicate whether;
  - (i) it agrees to the submission of the statement and to the return or disposal, as appropriate of the article or
  - (ii) it proposes to submit its own statement (being a statement that conforms with *subhead 3*) no later than at a time in advance of the commencement of the trial as shall be fixed by the regulations under *subhead 14*, or
  - (iii) it requires the article to be available as an exhibit at the trial.
6. Where *subhead 5(i)* or *subhead 5(ii)* applies, a Garda not below the rank of Inspector shall arrange for, as appropriate, the return of the article or its destruction.



Articles may only be returned or destroyed with written consent of the Prosecution and the accused or his legal representative.

7. The Inspector shall keep or shall arrange to be kept, a written record of the return of the object or, as the case may be, its destruction. The owner shall acknowledge in writing receipt of the object.
8. where *subhead 5(i) or 5(ii)* applies, the statement may be admissible as evidence in any trial for an offence.
9. where *subhead 5(iii)* applies, the article may be admitted as evidence in any trial for an offence
10. Where subsection 5(ii) or (iii) apply, the prosecution, at any time in the course of the trial, and without prejudice to the right of the defence under subsection 5(ii) or (iii), may apply to the court to have the statement submitted in evidence.
11. Nothing in this section shall prevent an application to the court in the course of the trial where the prosecution and the defence agree a statement that meets the requirements of *subhead 3*.
12. A statement that complies with *subhead 3* shall be regarded as evidence of the facts stated therein, until the contrary is shown.
13. (i) A person or persons who prepare some or all of the information contained in the statement may be called to give evidence in relation to the statement or part thereof and may be cross-examined on that evidence.  
(ii) Any party to the proceedings may call a witness to give evidence, and to be cross-examined on that evidence, in relation to any matter mentioned in the statement.
14. The Minister may make regulations under this section for the purpose of establishing time periods under *subheads 4 and 5* and such other matters as may be appropriate.