

Criminal Justice (Search Warrants) Bill 2012

Regulatory Impact Analysis

1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)			
Department/Office: Department of Justice and Equality		Title of Legislation: Criminal Justice (Search Warrants) Bill 2012	
Stage: Publication of Bill		Date: 25 May 2012	
Related Publications: General Scheme of the Criminal Justice (Search Powers) Bill 2012			
Available to view or download at: www.justice.ie			
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What policy objectives have been pursued? The policy objective is to address the implications of the Supreme Court judgment in <i>Ali Charaf Damache v the Director of Public Prosecutions, Ireland and the Attorney General</i> (23 February 2012) which found the search warrant power available to An Garda Síochána under section 29 of the Offences Against the State Act 1939 to be unconstitutional.			
What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified. 1. Do nothing. 2. Replace section 29 of the Offences against the State Act 1939 with a provision that takes account of the Supreme Court judgment mentioned above and makes any necessary amendments to other search powers.			
OPTIONS			
	COSTS	BENEFITS	IMPACTS
1.	<ul style="list-style-type: none">None	<ul style="list-style-type: none">None.	<ul style="list-style-type: none">The capacity of An Garda Síochána to investigate suspected subversive and terrorist activity inhibited.
2.	<ul style="list-style-type: none">No significant costs.	<ul style="list-style-type: none">Significant – appropriate search powers available to An Garda Síochána to investigate suspected subversive and terrorist activities.	<ul style="list-style-type: none">Capacity of An Garda Síochána to investigate suspected subversive and terrorist activities enhanced.

2. Policy Context and Objectives

The Supreme Court in *Ali Charaf Damache v The Director of Public Prosecutions, Ireland and the Attorney General* (23 February 2012) found the search warrant power in section 29(1) of the Offences against the State Act 1939 to be unconstitutional. It did so on the grounds that it permitted a search of a dwelling on foot of a warrant that was not issued by an independent person. The Court emphasised that a person authorising a search is required to be able to assess the conflicting interests of the State and the individual i.e. to be an independent person.

Section 29(1) allowed a superintendent to issue a warrant where he was satisfied that evidence of, or relating to, the commission or intended commission of an offence scheduled for the purposes of Part V of the 1939 Act (such as firearms and explosives offences) or a small number of other serious offences was to be found. It did not explicitly require the superintendent to be independent of the investigation.

The proceedings in question stemmed from an investigation into international terrorism, in particular a conspiracy to murder a Swedish cartoonist who had depicted the Islamic prophet Muhammad with the body of a dog. During the investigation the superintendent in charge issued a search warrant under section 29(1) in relation to the applicant's home. The applicant was subsequently arrested and charged with the offence of sending a message of a menacing character. A mobile phone found during the search was the key exhibit for the trial which was stayed pending the constitutional challenge.

When striking down section 29(1) the Court emphasised that: it was doing so in the circumstances of the case before it which it noted did not raise any issues of urgency; and that it had not considered or addressed situations of urgency.

In the absence of section 29 An Garda Síochána can avail of other statutory powers which allow applications for search warrants to be made to District Court judges. In addition, the law allows members of An Garda Síochána to enter premises, including dwellings, for the purpose of carrying out an arrest or to protect the life of a person within. However, the loss of section 29(1) creates a significant problem in the event that circumstances of urgency arise and it is not practicable to apply to a judge for a warrant. In particular, An Garda Síochána may be faced with situations involving firearms or explosives where urgent intervention is required in a time scale that may not allow a search warrant to be obtained from a judge.

Apart from section 29 the statute book contains a small number of provisions which permit senior members of the Gardaí to issue warrants. For the most part these are restricted to circumstances of urgency requiring the immediate issue of a warrant that would render it impracticable to apply to a District Court judge. This urgency requirement distinguishes them from section 29. The most frequently used of these provisions is section 8 of the Criminal Justice (Drug Trafficking) Act 1996.

3. Identification and Description of Options

The following options were considered:

1. Do nothing.
2. Replace section 29 of the Offences against the State Act 1939 with a provision that takes account of the Supreme Court judgment mentioned above.

Option 1 retains the status quo and would mean that the capacity of An Garda Síochána to investigate future subversive and terrorist activities would be inhibited.

Option 2 replaces section 29 with a provision that would take account of the Supreme Court judgment and makes any necessary amendments to other essential search warrant powers, in particular the search warrant powers applicable to investigations into drug offences. In order to cure the defects contained in section 29 the replacement provision would allow a superintendent who is independent of the investigation to issue a warrant of short duration in circumstances of urgency where it is impracticable to apply to a District Court judge, and require the superintendent to record the grounds on which he/she issued the warrant as soon as reasonably practicable after issuing the warrant. This option would ensure that the capacity of An Garda Síochána to investigate suspected subversive and terrorist activities was reinstated in conformity with the judgment.

4. Analysis of Costs, Benefits and Impacts for ALL Options

	COSTS	BENEFITS	IMPACTS
1.	<ul style="list-style-type: none">• None.	<ul style="list-style-type: none">• None.	<ul style="list-style-type: none">• The capacity of An Garda Síochána to investigate suspected subversive and terrorist inhibited.
2.	<ul style="list-style-type: none">• No significant costs.	<ul style="list-style-type: none">• Significant – appropriate search powers available to An Garda Síochána to investigate suspected subversive and terrorist activities.	<ul style="list-style-type: none">• Capacity of Garda Síochána to investigate suspected subversive and terrorist activities enhanced.

5. Consultation

The Bill has been drawn up in consultation with the Office of the Attorney General, the Garda Síochána, the Director of Public Prosecutions and relevant Government Departments.

6. Enforcement and compliance

The provisions of the Bill concern Garda powers to support enforcement of the criminal law. Ensuring their proper use is a matter for the Commissioner, the Garda Síochána Ombudsman Commission and the courts.

7. Review

The new provisions will be kept under ongoing review as to their practicality and workability as a matter of course.

8. Publication

The Regulatory Impact Analysis will be published on the Department's website at www.justice.ie

25 May 2012