



Number 33 of 2012

CRIMINAL JUSTICE (SEARCH WARRANTS) ACT 2012

ARRANGEMENT OF SECTIONS

Section

1. Amendment of Offences against the State Act 1939.
 2. Amendment of section 26(1) of Misuse of Drugs Act 1977.
 3. Amendment of section 8 of Criminal Justice (Drug Trafficking) Act 1996.
 4. Short title and commencement.
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[No. 33.] *Criminal Justice (Search Warrants) Act* [2012.]
2012.

ACTS REFERRED TO

Criminal Justice (Drug Trafficking) Act 1996	1996, No. 29
Criminal Law Act 1976	1976, No. 32
Misuse of Drugs Act 1977	1977, No. 12
Offences against the State Act 1939	1939, No. 13



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CRIMINAL JUSTICE (SEARCH WARRANTS) ACT 2012

AN ACT TO AMEND THE PROVISIONS OF THE OFFENCES AGAINST THE STATE ACT 1939, THE MISUSE OF DRUGS ACT 1977 AND THE CRIMINAL JUSTICE (DRUG TRAFFICKING) ACT 1996 RELATING TO THE ISSUE OF SEARCH WARRANTS; AND TO PROVIDE FOR RELATED MATTERS.

[24th July, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—The Offences against the State Act 1939 is amended by the substitution of the following section for section 29: Amendment of Offences against the State Act 1939.

“Search warrants relating to commission of offences under this Act, etc.

29.—(1) In this section ‘an offence to which this section applies’ means—

- (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,
- (d) treason, or
- (e) an offence of attempting or conspiring to commit, or inciting the commission of, an offence referred to in paragraph (a), (b) or (d).

(2) If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána not below the rank of sergeant that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence to which this section applies is to be found in any place, the judge may issue a warrant for the search of that place and any persons found at that place.

(3) Subject to subsections (4) and (5), 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 of an offence to which this section applies is to be found in any place, the member may issue to a member of the Garda Síochána not below the rank of sergeant a warrant for the search of that place and any persons found at that place.

(4) 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 to which this section applies, 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.

(5) A member of the Garda Síochána not below the rank of superintendent may issue a search warrant under this section only if he or she is independent of the investigation of the offence in relation to which the search warrant is being sought.

(6) A search warrant under this section shall be expressed, and shall operate, to authorise the member of the Garda Síochána named in the warrant, accompanied by such members of the Garda Síochána or of the Defence Forces as the member considers necessary—

- (a) to enter, at any time or times within one week of the date of issue of the warrant, on production if so requested of the warrant or a copy of it, and if necessary by the use of reasonable force, the place named in the warrant,
- (b) to search it and any persons found at that place, and
- (c) to seize anything found at that place, or anything found in the possession of a person present at that place at the time of the search, that that member reasonably believes to be evidence of, or relating to, the commission of an offence to which this section applies.

(7) Notwithstanding subsection (6), a search warrant issued by a member of the Garda Síochána not below the rank of superintendent under this section shall cease to have effect after a period

of 48 hours has elapsed from the time of the issue of the warrant.

(8) A member of the Garda Síochána or of the Defence Forces acting under the authority of a search 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 the 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.

(9) A person who obstructs or attempts to obstruct a member of the Garda Síochána or of the Defence Forces acting under the authority of a search warrant under this section, who fails to comply with a requirement under subsection (8)(a) or who gives a false or misleading name or address to the member shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

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

(11) A member of the Garda Síochána not below the rank of superintendent who issues a search warrant under this section shall, either at the time the warrant is issued or as soon as reasonably practicable thereafter, record in writing the grounds on which the warrant was issued, including how he or she was satisfied as to the matters referred to in subsection (4).

(12) In this section—

‘independent of’, in relation to the investigation of an offence, means not being in charge of, or involved in, that investigation;

‘place’ includes—

- (a) a dwelling or a part thereof,
- (b) a building or a part thereof,

- (c) a vehicle, whether mechanically propelled or not,
- (d) a vessel, whether sea-going or not,
- (e) an aircraft, whether capable of operation or not, and
- (f) a hovercraft.”.

Amendment of section 26(1) of Misuse of Drugs Act 1977.

2.—Section 26(1) of the Misuse of Drugs Act 1977 is amended by the substitution of “subject to the provisions of subsections (2) and (2A) of section 8 of the Criminal Justice (Drug Trafficking) Act 1996” for “subject to the provisions of subsection (2) of section 8 of the Criminal Justice (Drug Trafficking) Act 1996”.

Amendment of section 8 of Criminal Justice (Drug Trafficking) Act 1996.

3.—(1) Section 8 of the Criminal Justice (Drug Trafficking) Act 1996 is amended by the insertion of the following subsections after subsection (2):

“(2A) (a) A member of the Garda Síochána not below the rank of superintendent may issue a search warrant under the said section 26 only if he or she is independent of the investigation of the offence in relation to which the search warrant is being sought.

(b) In this subsection ‘independent of’, in relation to the investigation of an offence, means not being in charge of, or involved in, that investigation.

(2B) A member of the Garda Síochána not below the rank of superintendent who issues a search warrant under the said section 26 shall, either at the time the warrant is issued or as soon as reasonably practicable thereafter, record in writing the grounds on which the warrant was issued, including how he or she was satisfied as to the matters referred to in subsection (2).”.

(2) The amendments of section 8 of the Criminal Justice (Drug Trafficking) Act 1996 effected by *subsection (1)* shall apply only to a search warrant that is issued under section 26 of the Misuse of Drugs Act 1977 on or after the commencement of this section.

Short title and commencement.

4.—(1) This Act may be cited as the Criminal Justice (Search Warrants) Act 2012.

(2) This Act shall come into operation on the day after the day of its passing.