

Offences Against the State (Amendment) Act, 1998



Number 39 of 1998

OFFENCES AGAINST THE STATE (AMENDMENT) ACT, 1998

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Acts Referred to

<u>Bail Act, 1997</u>	1997, No. 16
<u>Criminal Justice Act, 1984</u>	1984, No. 22
<u>Criminal Justice Act, 1994</u>	1994, No. 15
<u>Criminal Law (Jurisdiction) Act, 1976</u>	1976, No. 14
<u>Explosive Substances Act, 1883</u>	46 & 47 Vict., c.3
<u>Explosives Act, 1875</u>	38 & 39 Vict., c.17
<u>Firearms Act, 1925</u>	1925, No. 17
<u>Firearms Act, 1964</u>	1964, No. 1
Firearms Acts, 1925 to 1990	
<u>Offences against the State Act, 1939</u>	1939, No. 13
<u>Offences against the State (Amendment) Act, 1972</u>	1972, No. 26
Offences against the State Acts, 1939 to 1985	



Number 39 of 1998

OFFENCES AGAINST THE STATE (AMENDMENT) ACT, 1998

AN ACT TO AMEND AND EXTEND THE OFFENCES AGAINST THE STATE ACTS, 1939 TO 1985, AND CERTAIN OTHER ENACTMENTS RELATING TO CRIMINAL LAW AND TO PROVIDE FOR RELATED MATTERS. [3rd September, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act—

“the Act of 1939” means the Offences against the State Act, 1939 ;

“the Acts” means the *Offences against the State Acts, 1939 to 1998*;

“explosive” means an explosive within the meaning of the Explosives Act, 1875 , and any other substance or thing that is an explosive substance within the meaning of the Explosive Substances Act, 1883 ;

“firearm” has the same meaning as it has in the Firearms Acts, 1925 to 1990.

(2) A reference in this Act to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended.

(3) A reference in this Act to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(4) A reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment, including this Act.

Membership of an unlawful organisation: inferences that may be drawn.

2.—(1) Where in any proceedings against a person for an offence under section 21 of the Act of 1939 evidence is given that the accused at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, failed to answer any question material to the investigation of the offence, then the court in determining whether to send forward the accused for trial or whether there is a case to answer and the court (or subject to the judge's directions, the jury) in determining whether the accused is guilty of the offence may draw such inferences from the failure as appear proper; and the failure may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to the offence, but a person shall not be convicted of the offence solely on an inference drawn from such a failure.

(2) *Subsection (1)* shall not have effect unless the accused was told in ordinary language when being questioned what the effect of such a failure might be.

(3) Nothing in this section shall, in any proceedings—

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his or her presence relating to the conduct in respect of which he or she is charged, in so far as evidence thereof would be admissible apart from this section, or

(b) be taken to preclude the drawing of any inference from the silence or other reaction of the accused which could be properly drawn apart from this section.

(4) In this section—

(a) references to any question material to the investigation include references to any question requesting the accused to give a full account of his or her movements, actions, activities or associations during any specified period,

(b) references to a failure to answer include references to the giving of an answer that is false or misleading and references to the silence or other reaction of the accused shall be construed accordingly.

(5) This section shall not apply in relation to failure to answer a question if the failure occurred before the passing of this Act.

Notification of witnesses.

3.—(1) In proceedings for an offence under section 21 of the Act of 1939 the accused shall not without the leave of the court call any other person to give evidence on his or her behalf unless, before the end of the prescribed period, he or she gives notice of his or her intention to do so.

(2) Without prejudice to *subsection (1)*, in any such proceedings the accused shall not without the leave of the court call any other person (in this section referred to as “the witness”) to give such evidence unless—

- (a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the accused at the time he or she gives the notice, any information in his or her possession which might be of material assistance in finding the witness,
- (b) if the name or the address is not included in that notice, the court is satisfied that the accused, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained,
- (c) if the name or the address is not included in that notice, but the accused subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he or she gives notice forthwith of the name, address or other information, as the case may be, and
- (d) if the accused is notified by or on behalf of the prosecution that the witness has not been traced by the name or at the address given, he or she gives notice forthwith of any such information which is then in his or her possession or, on subsequently receiving any such information, gives notice of it forthwith.

(3) The court shall not refuse leave under this section if it appears to the court that the accused was not informed of the requirements of this section—

- (a) by the District Court when he or she was sent forward for trial, or
- (b) by the trial court when, on being sent forward by the District Court for sentence, he or she changed his or her plea to one of not guilty, or
- (c) where he or she was brought before a Special Criminal Court for trial under section 47 of the Act of 1939, by the Court when it fixed the date of trial.

(4) Any notice purporting to be given under this section on behalf of the accused by his or her solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(5) A notice under *subsection (1)* shall either be given in court during, or at the end of, the preliminary examination of the offence concerned or be given in writing to the solicitor for the prosecution, and a notice under *paragraph (c) or (d) of subsection (2)* shall be given in writing to that solicitor.

(6) A notice required by this section to be given to the solicitor for the prosecution may be given by delivering it to him or her or by leaving it at his or her office or by sending it to him or her by registered post at his or her office.

(7) In this section “the prescribed period” means—

- (a) the period of 14 days from the end of the preliminary examination referred to in *subsection (5)*, or
- (b) where the accused waives a preliminary examination, the period of 14 days from the date of the waiver, or
- (c) where the accused, on being sent forward for sentence, changes his or her plea to one of not guilty, the period of 14 days from the date on which he or she does so, or
- (d) where the accused is brought before a Special Criminal Court for trial under section 47 of the Act of 1939, such period as is fixed by the Court when the Court fixes the date of trial.

(8) This section shall not apply in respect of any person whom the accused intends to call to give evidence on his or her behalf solely in relation to the matter of sentence in the event that the accused is convicted of the offence concerned.

(9) This section shall not apply in relation to proceedings referred to in *subsection (1)* commenced before the passing of this Act and for the purposes of this subsection proceedings referred to in *subsection (1)* are commenced when the accused is first brought before a court charged with the offence concerned or, as the case may be, is charged before a court with the offence concerned.

Amendment of section 3 of Offences against the State (Amendment) Act, 1972 .
Offences against the State (Amendment) Act, 1972 .

4.— Section 3 of the Offences against the State (Amendment) Act, 1972 , is hereby amended by the substitution of the following paragraph for paragraph (b) of subsection (1):

“(b) In paragraph (a) of this subsection ‘conduct’ includes—

- (i) movements, actions, activities or associations on the part of the accused person, and
- (ii) omission by the accused person to deny published reports that he was a member of an unlawful organisation, but the fact of such denial shall not by itself be conclusive.”.

Inferences from failure of accused to mention particular facts.

5.—(1) This section applies to—

- (a) an offence under the Acts,
- (b) an offence that is for the time being a scheduled offence for the purposes of Part V of the Act of 1939.
- (c) an offence arising out of the same set of facts as an offence referred to in *paragraph (a) or (b)*,

being an offence for which a person of full age and capacity and not previously convicted may, under or by virtue of any enactment, be punished by imprisonment for a term of 5 years or by a more severe penalty.

(2) Where in any proceedings against a person for an offence to which this section applies evidence is given that the accused—

- (a) at any time before he or she was charged with the offence, on being questioned by a member of the Garda Síochána in relation to the offence, or
- (b) when being charged with the offence or informed by a member of the Garda Síochána that he or she might be prosecuted for it,

failed to mention any fact relied on in his or her defence in those proceedings, being a fact which in the circumstances existing at the time he or she could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, then the court, in determining whether to send forward the accused for trial or whether there is a case to answer and the court (or, subject to the judge's directions, the jury) in determining whether the accused is guilty of the offence charged (or of any other offence of which he or she could lawfully be convicted on that charge) may draw such inferences from the failure as appear proper; and the failure may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to which the failure is material, but a person shall not be convicted of an offence solely on an inference drawn from such a failure.

(3) *Subsection (2)* shall not have effect unless the accused was told in ordinary language when being questioned, charged or informed, as the case may be, what the effect of such a failure might be.

(4) Nothing in this section shall, in any proceedings—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his or her presence relating to the conduct in respect of which he or she is charged, in so far as evidence thereof would be admissible apart from this section, or

(b) be taken to preclude the drawing of any inference from the silence or other reaction of the accused which could properly be drawn apart from this section.

(5) This section shall not apply in relation to a failure to mention a fact if the failure occurred before the passing of this Act.

Directing an unlawful organisation.

6.— A person who directs, at any level of the organisation's structure, the activities of an organisation in respect of which a suppression order has been made under section 19 of the Act of 1939 shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

Possession of articles for purposes connected with certain offences.

7.—(1) A person shall be guilty of an offence if he or she has any article in his or her possession or under his or her control in circumstances giving rise to a reasonable suspicion that the article is in his or her possession or under his or her control for a purpose connected with the commission, preparation or instigation of an offence under the Explosive Substances Act, 1883, or the Firearms Acts, 1925 to 1990, which is for the time being a scheduled offence for the purposes of Part V of the Act of 1939.

(2) It shall be a defence for a person charged with an offence under this section to prove that at the time of the alleged offence the article in question was not in his or her possession or under his or her control for any purpose specified in *subsection (1)*.

(3) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

(4) The reference in *subsection (1)* to an offence under an enactment referred to therein shall be deemed to include a reference to an act or omission done or made outside the State that would be an offence under such an enactment if done or made in the State.

Unlawful collection of information.

8.—(1) It shall be an offence for a person to collect, record or possess information which is of such a nature that it is likely to be useful in the commission by members of any unlawful organisation of serious offences generally or any particular kind of serious offence.

(2) It shall be a defence for a person charged with an offence under this section to prove that at the time of the alleged offence the information in question was not being collected or recorded by him or her, or in his or her possession, for the purpose of its being used in such commission of any serious offence or offences.

(3) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

(4) In this section—

“members of any unlawful organisation” includes members of such an organisation whose identities are unknown to the Garda Síochána;

“serious offence” means an offence which satisfies both of the following conditions:

- (a) it is an offence for which a person of full age and capacity and not previously convicted may, under or by virtue of any enactment, be punished by imprisonment for a term of 5 years or by a more severe penalty, and
- (b) it is an offence that involves loss of human life, serious personal injury (other than injury that constitutes an offence of a sexual nature), false imprisonment or serious loss of or damage to property or a serious risk of any such loss, injury, imprisonment or damage,

and includes an act or omission done or made outside the State that would be a serious offence if done or made in the State.

Withholding information.

9.—(1) A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in—

- (a) preventing the commission by any other person of a serious offence, or
- (b) securing the apprehension, prosecution or conviction of any other person for a serious offence,

and fails without reasonable excuse to disclose that information as soon as it is practicable to a member of the Garda Síochána.

(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding five years or both.

(3) In this section “serious offence” has the same meaning as it has in section 8.

Extension of period of detention under section 30 of Act of 1939.

10.— Section 30 of the Act of 1939 is hereby amended by the substitution of the following subsections for subsection (4):

“(4) An officer of the Garda Síochána not below the rank of superintendent may apply to a judge of the District Court for a warrant authorising the detention of a person detained pursuant to a direction under subsection (3) of this section for a further period not exceeding 24 hours if he has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

(4A) On an application under subsection (4) of this section the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 24 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.

(4B) On an application under subsection (4) of this section the person to whom the application relates shall be produced before the judge concerned and the judge shall hear any submissions made and consider any evidence adduced by or on behalf of the person and the officer of the Garda Síochána making the application.

(4C) A person detained under this section may, at any time during such detention, be charged before the District Court or a Special Criminal Court with an offence or be released by direction of an officer of the Garda Síochána and shall, if not so charged or released, be released at the expiration of the period of detention authorised by or under subsection (3) of this section or, as the case may be, that subsection and subsection (4A) of this section.”.

Rearrest under
section 30 of Act
of 1939.

11.— The following section is hereby inserted after section 30 of the Act of 1939:

“30A. (1) Where a person arrested on suspicion of having committed an offence is detained pursuant to section 30 of this Act and is released without any charge having been made against him he shall not—

(a) be arrested again for the same offence, or

(b) be arrested for any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he was arrested, suspected, or ought reasonably to have suspected, him of having committed,

except under the authority of a warrant issued by a judge of the District Court who is satisfied on information supplied on oath by an officer of the Garda Síochána not below the rank of superintendent that further information has come to the knowledge of the Garda Síochána since the person's release as to his suspected participation in the offence for which his arrest is sought.

(2) Section 30 of this Act, and, in particular, any powers conferred thereby, shall apply to or in respect of a person arrested in connection with an offence to which that section relates under a warrant issued pursuant to subsection (1) of this section as it applies to or in respect of a person to whom that section applies, with the following and any other necessary modifications:

(a) the substitution of the following subsection for subsection (3):

‘(3) Whenever a person is arrested under a warrant issued pursuant to section 30A(1) of this Act, he may be removed to and detained in custody in a Garda Síochána station, a prison or some other convenient place for a period of 24 hours from the time of his arrest.’,

(b) the deletion of subsections (4), (4A) and (4B), and

(c) the addition of the following at the end of subsection (4C):

'or, in case the detention follows an arrest under a warrant issued pursuant to section 30A of this Act, by subsection (3) of this section as substituted by the said section 30A.'

(3) Notwithstanding subsection (1) of this section, a person to whom that subsection relates may be arrested for any offence for the purpose of charging him with that offence forthwith."

Training persons in the making or use of firearms, etc.

12.—(1) A person who instructs or trains another or receives instruction or training in the making or use of firearms or explosives shall be guilty of an offence.

(2) It shall be a defence for a person charged with an offence under this section to prove that the giving or receiving of such instruction or training was done with lawful authority or that he or she had reasonable excuse for giving or receiving such instruction or training.

(3) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

(4) This section shall not apply to any assembly referred to in section 15 (4) of the Act of 1939.

Provision in

13.— Section 52 of the Act of 1939 shall not have effect in relation to a person referred to in subsection (1) thereof unless, immediately before a demand is made of him or her under that subsection, he or she is informed in ordinary language by a member of the Garda Síochána of—

(a) the fact that the demand is being made under the said section 52, and

(b) the consequences provided by that section for a failure or refusal to comply with such a demand or for the giving of any account or information in purported compliance with such a demand which is false or misleading.

Offences under Act to be scheduled offences.

14.—(1) It is hereby declared that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to each offence under sections 6 to 9 and 12.

(2) Each offence under sections 6 to 9 and 12 shall be deemed to be a scheduled offence for the purposes of Part V of the Act of 1939 as if an order had been made under section 36 of that Act in relation to it and subsection (3) of that section and section 37 of that Act shall apply to such an offence accordingly.

(3) Nothing in *subsection (1) or (2)* shall be construed as affecting, or limiting in any particular case, the exercise—

- (a) by the Government of any of its powers under any provision of section 35 or 36 of the Act of 1939,
- (b) by the Director of Public Prosecutions of his or her power under section 45 (2) of the said Act to direct that a person not be sent forward for trial by the Special Criminal Court on a particular charge, or
- (c) by the Government or the Director of Public Prosecutions of any other of its or his or her powers under Part V of the said Act or by any other person of his or her powers under the said Part.

Penalties for
certain offences.

15.—(1) Section 15 of the Firearms Act, 1925 , as amended by section 21 (4) of the Criminal Law (Jurisdiction) Act, 1976 , and section 14 of the Criminal Justice Act, 1984 (possessing firearm or ammunition with intent to endanger life or cause serious injury to property) is hereby amended by the substitution for “imprisonment for life” of “a fine or imprisonment for life or both”.

(2) Section 27A(1) of the Firearms Act, 1964 , inserted by section 8 of the Criminal Law (Jurisdiction) Act, 1976 , and amended by section 14 of the Criminal Justice Act, 1984 (possession of firearm or ammunition in suspicious circumstances) is hereby amended by the substitution for “imprisonment for a term not exceeding ten years” of “a fine or imprisonment for a term not exceeding ten years or both”.

(3) Section 3 of the Explosive Substances Act, 1883 , inserted by section 4 of the Criminal Law (Jurisdiction) Act, 1976 , is hereby amended by the substitution for “imprisonment for life” of “a fine or imprisonment for life or both”.

(4) Section 4 of the Explosive Substances Act, 1883 , is hereby amended by the deletion in subsection (1) of all the words from “of felony” to the end of that subsection and the substitution of “of an offence and shall be liable, on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years or both, and the explosive substance shall be forfeited.”.

Amendment of
Schedule to Bail
Act, 1997 .

16.— The Schedule to the Bail Act, 1997 , is hereby amended by the substitution for paragraph 25 of the following paragraph:

“25. Any offence under the *Offences against the State Acts, 1939 to 1998*.”.

Forfeiture of
property.

17.— Section 61 of the Criminal Justice Act, 1994 , is hereby amended—

(a) by the insertion of the following subsection after subsection (1):

“(1A) Where—

(a) a person has been convicted of an offence under section 3 or 4 of the Explosive Substances Act, 1883 , section 15 of the Firearms Act, 1925 , or section 27A of the Firearms Act, 1964 , and

(b) a forfeiture order may be made in the case of that person by virtue of subsection (1) of this section in respect of property to which that subsection applies,

the court shall, subject to subsection (5) of this section, make the forfeiture order, unless, having regard to the matters mentioned in subsection (2) of this section and to the nature and degree of seriousness of the offence of which the person has been convicted, it is satisfied that there would be a serious risk of injustice if it made the order.”,

and

(b) by the insertion of the following subsection after subsection (5):

“(5A) A court may, in making a forfeiture order, include such provisions in that order, or, as the case may require, may make an order supplemental to that order that contains such provisions, as appear to it to be necessary to protect any interest in the property, the subject of the forfeiture order, of a person other than the offender.”.

Duration of certain sections. **18.**—(1) Each of the following sections, namely *sections 2 to 12 and 14 and 17* shall, subject to *subsection (2)*, cease to be in operation on and from the 30th day of June, 2000, unless a resolution has been passed by each House of the Oireachtas resolving that that section should continue in operation.

(2) A section referred to in *subsection (1)* may be continued in operation from time to time by a resolution passed by each House of the Oireachtas before its expiry for such period as may be specified in the resolutions.

(3) Before a resolution under this section in relation to a section specified in *subsection (1)* is passed by either House of the Oireachtas, the Minister for Justice, Equality and Law Reform shall prepare a report, and shall cause a copy of it to be laid before that House, of the operation of the section during the period beginning on the passing of this Act or, as may be appropriate, the date of the latest previous report under this subsection in relation to that section and ending not later than 21 days before the date of the moving of the resolution in that House.

(4) For the avoidance of doubt, any enactment the amendment of which is effected by a section of this Act that ceases to be in operation on and from the day referred to in *subsection (1)* or, as the case may be, the expiry of the period for which it is continued in operation under *subsection (2)* (“the expiry”) shall, on and from that day or, as the case may be, the expiry, apply and have effect as it applied and had effect immediately before the passing of this Act but subject to any amendments made by any other Act of the Oireachtas after such passing.

Short title, **19.**—(1) This Act may be cited as the Offences against the State (Amendment) Act,
construction and 1998.
collective citation.

(2) The Offences against the State Acts, 1939 to 1985, and this Act (other than sections
15 to 18) shall be construed together as one and may be cited together as the Offences
against the State Acts, 1939 to 1998.