REPORT PURSUANT TO SECTION 12 OF THE CRIMINAL JUSTICE (SURVEILLANCE) ACT 2009

The Government, at its meeting on the 30th September, 2009, designated Mr. Justice Kevin Feeney as the designated judge pursuant to s. 12 of the Criminal Justice (Surveillance) Act 2009 (the Act). By letter of the 14th October, 2009 the Minister for Justice, Equality and Law Reform wrote to Mr. Justice Feeney informing him of the fact that he was to be "the designated judge" under the Act.

Under section 12(3) the functions of the designated are to –

(a) keep under review the operation of sections 4 to 8, and

(b) report to the Taoiseach from time to time and at least once every 12 months concerning any matters relating to the operation of those sections that the designated judge considers should be reported.

The purpose of the Criminal Justice (Surveillance) Act 2009 is identified in its title where it states –

> "An Act to provide for surveillance in connection with the investigation of arrestable offences, the prevention of suspected arrestable offences and the safeguarding of the State against subversive and terrorist threats, to amend the Garda Síochána Act 2005 and the Courts (Supplemental Provisions) Act 1961 and to provide for matters connected therewith."

The functions of the designated judge include keeping under review sections 4 to 8 of the Act. Section 4 provides for applications for authorisation for surveillance, section 5 provides for authorisation, section 6 provides for variation or renewal of

authorisation, section 7 provides for approval for surveillance in cases of urgency and section 8 provides for tracking devices.

The Act provides that surveillance may only be carried out by a member of An Garda Siochana, the Defence Forces or an officer of the Revenue Commissioners in accordance with a valid authorisation issued by a judge of the District Court, or, in certain limited circumstances, in accordance with an approval issued by a senior officer of a designated rank. Surveillance is defined in s. 1 of the Act to mean:

> "(a) monitoring, observing, listening to or making a recording of a particular person or group of persons or their movements, activities and communications or
>
> (b) monitoring or making a recording of places or things,
>
> by or with the assistance of surveillance devices."

Surveillance device is defined in the same section as "an apparatus designed or adapted for use in surveillance" and certain apparatus are expressly excluded as being surveillance devices for the purpose of the Act. The legislation was enacted in circumstances where non-trespassory surveillance that is not specifically authorised by statute had been found by the European Court of Human Rights to be unlawful and in breach of the rights to privacy under the Convention. The 2009 Act provides statutory authorisation for non-trespassory surveillance in identified circumstances.

As this is the first report under the Act, it is appropriate to provide a brief overview of sections 4 to 8 of the Act which are the sections the subject of this report. The starting point is that before any surveillance may be validly carried out, it is necessary to obtain an authorisation either from the District Court under section 5 or in cases of "urgency" surveillance may be carried out without Court authorisation if it has been approved by a superior officer in accordance with section 7 and surveillance

carried out under that section may not be carried out for a period of more than 72 hours from the time at which the approval is granted. Section 4 of the Act allows certain persons to apply for authorisation under the Act, those being "a superior officer" of An Garda Siochana, the Defence Forces and the Revenue Commissioners. The minimum rank of the superior officer is designated in the Act. An application for authorisation is made *ex parte* to a District judge assigned to any District Court district. The scheme under the Act therefore does not require the application to be made to the District Court district where it is intended to carry out the surveillance. An application under section 4 to authorise surveillance is heard in camera, that is in private. Under the Act the application must be grounded on information sworn by the applicant which establishes that that person has reasonable grounds for believing a number of matters, namely:

(a) that the surveillance is necessary,

(b) that the least intrusive means available having regard to its objectives has been adopted,

(c) that the surveillance is proportionate to its objectives having regard to all the circumstances including its likely impact on the rights of any person, and

(d) that the duration for which such surveillance is sought is reasonably required to achieve the objectives envisaged.

Only officers of the three identified bodies are entitled to seek authorisation, those bodies being An Garda Siochana, the Defence Forces and the Revenue Commissioners. Section 4 of the Act identifies the information which each of those bodies must establish to show that the surveillance is necessary.

Certain designated persons are therefore entitled to make an application for authorisation for surveillance under the Act. That application is made *ex parte* to the District Court and the District judge hearing the application may issue the authorisation or may issue it subject to conditions or may refuse the application. Section 5 of the Act deals with the authorisation and where an authorisation is issued, following a District Court order, such authorisation authorises the applicant, accompanied by any other person he/she considers necessary, to enter any place (if necessary by reasonable force), for the purpose of initiating or carrying out the authorised surveillance and withdrawing the authorised surveillance device without the consent of the owner/person in charge. Section 5 also provides that the authorisation must be in writing and must specify the particulars of the surveillance device authorised to be used, the subject of the surveillance, that is the person, place or thing, the name of the superior officer to whom authorisation is issued, any conditions imposed by the order and the expiry date of the authorisation. The authorisation issued by the Court is valid in respect of any part of the State and is not restricted to the District Court district in which the order was obtained. The duration of the authorisation is identified on the face of the order and the District Court judge states the date upon which it will expire which is a date which cannot be later than three months from the date of issue. The Act provides in section 6 for the possibility of renewal or variation of an order and an application may be brought to renew or vary the authorisation but that application must be done prior to the expiration of the original order. An application for renewal or variation must be grounded on information sworn by the person applying and must state the reasons for such application justifying a renewal or variation of the authorisation.

Section 7 of the Act deals with surveillance in urgent cases which may be carried out without an authorisation pursuant to a District Court order as provided for in section 5. Approval for surveillance in cases of urgency is dealt with in section 7 and such surveillance must be carried out with the approval of a senior officer of a minimum designated rank. Before granting the approval, the superior or senior officer must be satisfied that there are reasonable grounds for believing that an authorisation would be issued by the District Court and that one or more of the following conditions of urgency apply:

(a) it is likely that –

a person would abscond for the purpose of avoiding justice,

obstruct the course of justice or

commit an arrestable/a revenue offence;

(b) information or evidence in relation to the commission of an arrestable offence or a revenue offence is likely to be destroyed, lost or otherwise become unavailable, or

(c) the security of the State would be likely to be compromised.

An approval granted under section 7 in a case of urgency may be granted subject to conditions including the duration of the surveillance which cannot exceed 72 hours. The Act provides that if the superior officer has reasonable grounds for believing that surveillance beyond the period of 72 hours is warranted that he or she must make an application to the Court prior to the expiration of the period of 72 hours for an authorisation to continue the surveillance. Section 7 of the Act identifies the obligations on a superior officer who grants an approval.

Section 8 of the Act deals with tracking devices which provides a statutory basis by which the movements of persons, vehicles or things may be monitored using a tracking device for a period of not more than four months where approved by a superior officer without any necessity of making an application to Court. A tracking device is defined and the minimum rank of the superior officer who may approve the use of a tracking device is set out in the section. That section provides that in addition to satisfying the normal grounds for issuing an authorisation, a person applying for such authorisation must show that the use of a tracking device would be sufficient for obtaining the information/evidence sought and that the information/evidence sought could reasonably be obtained by the use of a tracking device for a specified period that is as short as is practicable to allow the information or evidence to be obtained. An approval may be granted subject to conditions including the duration of the surveillance.

A number of Statutory Instruments have been introduced which are relevant to the operation and function of the Act. Three Statutory Instruments, dealing with written record of approval, for An Garda Siochana, the Revenue Commissioners and the Defence Forces were introduced, namely, Statutory Instruments No. 275/209, 290/209 and 80/2010. District Court Rules dealing with the procedures to be applied by the District Court were introduced by two Statutory Instruments, namely, Statutory Instrument No. 314/2010 and Statutory Instrument No. 360/2010. An order under 34A of the District Court Rules is also relevant.

The Act was signed into law on the 12th July, 2009 and became operative as of that date. I was not notified of my appointment as the designated judge pursuant to section 12 until I received the letter of the 14th October, 2009. In those circumstances I determined, that in the first year of its operation, that it would be appropriate to

review the operation of the Act from its inception date to the date of the 31st July, 2010 and to review the operation and use of sections 4 to 8 under the Act during that period.

After my nomination as the designated judge, I was contacted by the office of the Chief of Staff of the Defence Forces, the Commissioner of An Garda Siochana and the Chairman of the Revenue Commissioners who in each instance identified a senior person who would act as a point of contact and would facilitate me in the carrying out of my functions under section 12 of the Act. On being informed of the contact person in each of the three bodies, I made written contact with each of those persons in October 2009. In November 2009 I attended at McKee Barracks and at Garda Headquarters in Phoenix Park for the purpose of discussing the procedures which had been followed to that date and/or were to be followed by both of those bodies. In particular, I observed the initial procedures and documents used by An Garda Siochana in operating the provisions of the Act and ascertained that adequate and sufficient documentary records were being kept. Records were being kept of every occasion when the provisions of the Act were used.

By the 19th November, 2009, which was the date of my attendance in Garda Headquarters where I met with an Assistant Commissioner and a number of other officers, it was apparent that An Garda Siochana had already availed of the provisions of the Act and had put in place a centralised written record of all occasions and instances in which there had been applications for authorisations, the granting of authorisations, the variation or renewal of authorisations, the approval of surveillance in the case of urgency and the use of tracking devices.

After the Act had been in use for a period of slightly in excess of one year, I again made contact with each of the contact persons within the three organisations

and arranged to attend at a relevant location where each of those three bodies held the relevant documentation and information. Meetings were arranged with each of the three bodies in the month of September 2010 and I attended at McKee Barracks where I met with the Colonel in charge of the operation. The Colonel in charge had available the written records in relation to each and every occasion upon which the provisions of section 4 to section 8 of the Act had been operated by the Defence Forces in the period from the commencement of the Act up to the 31st July, 2010. I will deal later with each of the three bodies in separate paragraphs. In September 2010 I also attended at the headquarters of An Garda Siochana where I met with the Assistant Commissioner in charge of the use and operation of surveillance under the 2009 Act and had made available to me the documentation and records relating to each and every occasion upon which An Garda Siochana had availed of the provisions of section 4 to section 8 of the Act. Similarly in September 2010 I attended at the Investigations and Prosecution Division of the Revenue Commissioners and met with the Assistant Secretary in charge of the use and operation of surveillance under the Act by the Revenue Commissioners. I was provided with documentation and records dealing with each and every use by the Revenue Commissioners of the provisions of section 4 to section 8 of the Act during the relevant period up to the 31st July, 2010.

The Defence Forces

My consideration of the documents and records kept by the Defence Forces and made available to me established that the Defence Forces had availed of the provisions under the Act on a limited number of occasions during the twelve and a half month period under review. The Defence Forces had used the provisions of the Act on less than ten occasions and therefore I was in a position to review and consider

the documents available in relation to each and every use by the Defence Forces of the provisions of sections 4 to 8 of the Act. On every occasion upon which surveillance was carried out by the Defence Forces during the twelve and a half month period, such surveillance was carried out pursuant to an authorisation issued by the District Court following an application for such authorisation. On each occasion upon which an application was made to the District Court, the Colonel in charge was present and was available for examination by the District Court judge. I reviewed the documentation and was satisfied that from those records each and every occasion upon which the Defence Forces had operated the provisions of section 4 that an authorisation from the District Court had been obtained. On every occasion the Colonel in charge was the instigator of the application for authorisation under section 4. In each instance the authorisation issued by the District Court under section 5 was available to me. On no occasion was an authorisation granted for the maximum period and the period of authorisation was in each instance limited to a period less than three months. The basis for the application under section 4 in each and every instance was that the surveillance sought was necessary for the purpose of maintaining the security of the State. In each instance upon which an application under section 4 was granted the District judge was satisfied to make an order. For such an order to be made the District judge is required to be satisfied by information on oath of the superior officer concerned. The authorisation granted provides particulars of the surveillance device to be used, the person or place or thing that is to be the subject of surveillance, the name of the superior officer to whom it was issued and the conditions upon which the authorisation was issued including the date of expiry. In no instance was section 6 of the Act used by the Defence Forces, that is, an application for variation or renewal of authorisation. In one instance a person who

had been previously the subject matter of a surveillance order was the subject of a subsequent application to the District Court. The documentation indicated that in that case there had been an authorisation for a period of one month in respect of a particular person but that the surveillance device had been removed before the end of that period and that due to the need to extend the scope and nature of the surveillance a fresh application was made to the District Court for an authorisation under section 5. The fact of the earlier surveillance order was disclosed to the Court at the time of the making of the second application.

As indicated earlier in this report an application for authorisation can be made to any District judge and I therefore consider it appropriate to identify whether or not one particular District judge was being used as the person to whom applications were made by the Defence Forces. The position identified by the documentation was that every authorisation issued during the period was issued by a different District judge.

I had the opportunity of speaking with the Colonel in charge of the operation of the Act and I was able to discuss with him the operation of sections 4 to 8 of the Act and to review the use by the Defence Forces of the provisions under the Act during the twelve and a half month period after the Act came into operation. The Defence Forces did not avail of the provisions under section 7 for the approval of surveillance in cases of urgency on any occasion during the period nor had they availed of the provisions under section 8. Due to the limited number of uses by the Defence Forces in the period under consideration I was able to review the files and documents available in respect of each and every use by the Defence Forces of the provisions of the Act. That review demonstrated that in each and every instance a District judge was satisfied to grant an authorisation under section 5 and that such authorisation was available for review. I spoke to the Colonel in charge and obtained

an oral account of the circumstances giving rise to the application for authorisation. That information is confidential and it relates to criminal investigations which are progressing. The documentation available and the information provided to me by the Colonel in charge enabled me to review the operation of sections 4 to 8 by the Defence Forces for the twelve and a half month period in question. The implementation of Statutory Instrument No. 360/2010 will facilitate a standardisation of information available in relation to applications brought under section 4 for an authorisation under section 5.

During my review nothing came to my attention in relation to the Defence Forces' use of the Act which would suggest any improper or inappropriate use of the provisions of sections 4 to 8 of the Act.

An Garda Siochana

In November 2009 I visited the Assistant Commissioner in charge of the operation and co-ordination of all applications for authorisation or use under sections 4 to 8 of the Act. I met with the Assistant Commissioner and a number of other members of An Garda Siochana and ascertained that early use had been made by An Grda Síochána of the provisions of the Act after its introduction. I reviewed the make up of the documentation and information which was kept and recorded. The documentation and records were retained in a centralised location and were available to me for review. The system in operation was such that all applications under the Act were directed through the Assistant Commissioner in charge.

In September 2010 I met with the Assistant Commissioner in charge of the operation of the Act for An Garda Siochana and a number of other senior members of the Gardaí. The manner in which An Garda Siochana operates the Act is that all

requests for use of and all applications for use or authorisations under the Act and all requests for use of tracking devices are dealt with by one Assistant Commissioner operating at the head of a small team of senior officers. All documentation and records generated are available centrally and were available to me on the occasion of my visit.

The period of review was from the commencement of the Act until the 31st July, 2010. The use of a central point for all uses under the Act results in all applications for usage being directed through one section and that section has senior officers who have been trained in relation to the operation of the Act so as to ensure that the procedures and record keeping which have been laid down are maintained.

From my discussions with the Assistant Commissioner and the other senior members, it was apparent that early consideration was given as to the mode of operation which the Gardaí would adopt in seeking to avail of the provisions of the Act. Legal advice was sought including consideration of international case law from other common law jurisdictions where surveillance has been permitted by statute and also consideration was given to decisions of the European Court of Human Rights. Part of that ongoing consideration is that an internal policy document is in the process of completion and it is envisaged that it will be available for circulation within the Gardaí prior to the end of this calendar year. When that document has been completed a copy of it will be made available to me as part of my review of the operation of the Act as designated judge. The policy document will apply throughout An Garda Siochana.

The surveillance permitted under the Act is operated by An Garda Siochana in such a manner that in practise no individual Guard, no matter of what rank, can instigate a usage under the Act without going through the internal procedures which

direct the usage through a particular section. This applies in every case. That approach was apparent from my inspection as all the documentation and records relating to all and any usage under the Act had been directed through the one section. The scope of usage related to all areas of serious organised crime and subversive activities.

The considerable resource implications involved in the use of the Act results in a situation where surveillance is only used in carefully selected and targeted cases. An examination of the documents and records available to me and an examination of the breakdown of the usage by the Gardaí of the provisions of the Act confirms this situation. It is also the case that some usage involves real risk to the persons involved in assisting in the application for or the usage of surveillance devices. Surveillance devices can and are operated in a covert manner but the position is that the usage of the product of such surveillance in Court proceedings involves the operation in question being the subject of review in public with the actual or potential identification of parties involved in the process. This results in deployment of devices in carefully selected and considered cases.

It is to be noted that there is currently available on a commercial basis surveillance devices and counter-surveillance devices which can be purchased by members of the public. The use of such devices by third parties, including criminals, is a matter of ongoing concern to the Gardaí.

All the documentation and records generated by the Gardaí in their use of the provisions of the Act in the relevant period were made available to me in Garda Headquarters. Records relating to each and every section 5 application were available and it was apparent from an examination of those records that no individual Guard

could pursue an authorisation without him or her being directed to the section which controlled and monitored the operation of the Act.

In relation to the section 4 applications, which are applications for authorisation, I had regard to the occasions where a request for an application was refused. There were less than ten cases where members of the Gardaí had sought to have an application for authorisation made but where such request had been refused. All the files relating to those cases were available to me and I chose at random 50% of the cases. That review indicated that requests for an application for authorisation to be made had been made in circumstances where they were premature or where such requests did not provide the necessary information to ground an application for authorisation or where circumstances were such that it was deemed that such application was not proportionate. In those cases no application was made. Given that the procedure which is followed by An Garda Siochana is that all applications go through the section dealing with these matters and given the imminent introduction of a written internal protocol, it would appear unlikely that there will be a substantial number of cases where applications by individual Gardaí for the making of an application for authorisation under section 4 of the Act will be refused. However, the procedures which are in place provides a filtering process to endeavour to ensure that the requirements for the granting of an authorisation are present prior to an application for authorisation being made.

In the relevant period, An Garda Siochana made a number of applications under section 4 and authorisation was granted under section 5 by the District Court. The number of cases represented a small double figure number and therefore I was able to review 33% of the section 5 authorisations on a random basis. The documents and records relating to all applications were available and I chose 33% of the cases at

random. A review of those cases demonstrated that usually applications were made to the District judge assigned to the District Court area where the surveillance was envisaged to occur. In all instances applications were made on information on oath and since the introduction of Statutory Instrument No. 360/2010 that information is in a set format. The cases reviewed indicated that the Act had been used in an appropriate manner and the surveillance dealt with such matters as the delivery of controlled drugs and investigations of crimes of serious violence invariably targeted against organised criminal or subversive groupings. Consideration of the documents demonstrated that the period of authorisation was invariably less than the maximum period and was targeted to the nature and circumstances of the proposed surveillance. Also in a number of instances, notwithstanding the grant of an authorisation under section 5, no deployment occurred due to altered circumstances.

In each and every one of the cases chosen at random I was provided with information concerning the circumstances as to why such surveillance took place, how such surveillance occurred, the nature and extent and type of information which was gleaned and the extent to which deployment was possible.

There were no applications for variation or renewal of authorisations made by An Garda Siochana during the relevant period.

A number of authorisations under section 7 for approval of surveillance in cases of emergency were made during the relevant period. As those applications were not the subject of consideration by the District Court I paid particular regard to those approvals during my review. As in the other cases all the documentation and records relating to such approvals were available for my consideration. The number of authorisations was a double figure number representing roughly twice the number of section 5 authorisations. In reviewing the records it was apparent that a number of the

approvals for surveillance in cases of emergency proceeded to subsequent section 4 applications and the grant of a section 5 authorisation. That sequence could be gleaned from a cross-reference of the documentation. I reviewed a substantial number of the section 7 approvals and in each and every instance the order was limited to a period of no greater than 72 hours. In the vast majority of cases the order was for a duration of considerably less than 72 hours. In reviewing those approvals I paid regard to the information which was present on the documents and records concerning the urgency of such approvals. That review demonstrated that in the cases reviewed there was in each instance an identifiable urgency for granting an approval under section 7. In a number of cases information had only become available immediately prior to the approval being granted under section 7 and such approval related to events which were imminent. In a significant number of cases where approval was granted under section 7 the duration of the approved surveillance was so limited in time that such surveillance would have been completed within a matter of hours and prior to any opportunity to apply to Court for an authorisation under section 5. Examination of the records and documents also demonstrated that urgent approvals were required in circumstances where information crystallised immediately prior to the actual surveillance itself. The use of section 7 and the other sections of the Act and the grant of approvals for surveillance in case of urgency related to organised criminal activity and to matters of State security.

From my examination of the section 7 approvals and from the information provided to me at my meeting it is indicated that section 7 approvals are used in circumstances where there is neither the time nor circumstances which will allow or permit for an application under section 4 for an authorisation under section 5. The nature of the surveillance, the location of such surveillance and the duration identified

in the documents is entirely consistent with there being urgency in each of the cases which was considered.

A written record is kept of approvals granted under section 7 which provides particulars of the surveillance device, the person, place or thing that is to be the subject of the surveillance, the name of the member of An Garda Siochana to whom such approval is granted, the conditions imposed on such approval, the time at which such approval is granted and the duration of the approved surveillance. In at least one instance where a file was reviewed, the documents demonstrated the imposition of conditions which were consistent with the protection of third parties' privacy.

The final section of the Act which the designated judge is required to keep under review is section 8 which deals with tracking devices. During the relevant period tracking devices were approved for use on a substantial number of occasions, the number of such approvals being less than 100. As with the operation of the other sections of the Act, all documentation and records relating to such approvals for the relevant period were available. I was able to review a number of the cases at random and it was apparent that tracking devices had been placed on vehicles and objects. As tracking devices are less intrusive than surveillance devices the approval of the use of such devices does not require any application to Court. A member or officer can apply to a superior officer for the grant of an approval to use a tracking device provided the requirements laid down in section 8, sub-section (2) of the Act are met. An examination of the records demonstrated that tracking devices were invariably used as an aid to traditional Garda investigative methods for the purposes of giving the location and direction of vehicles and objects if moved. The cases which I reviewed demonstrated that the approvals under section 8 were granted in

circumstances where there was extensive information available from earlier investigations.

The review of the approvals granted under section 8 including the conditions as to duration and use of the tracking devices and the information provided concerning the circumstances and reasons for granting such approvals indicated that such tracking devices were invariably used as part of ongoing investigations and as an aid to traditional Garda investigative methods.

During my review of An Garda Siochana's use of sections 4 to 8 of the Act, nothing came to my attention which would suggest any improper or inappropriate use and the procedures in place are designed to ensure that such event should not occur.

The Revenue Commissioners

In September of 2010 I visited the Investigations and Prosecutions Division of the Revenue Commissioners and spoke to an Assistant Secretary who was accompanied by two other officials at principal officer level. The Revenue also operates a system where all applications under the Act are made through the one office. All the documents and records relating to the use and operation of the 2009 Act by the Revenue Commissioners during the relevant period were available for my review. To assist in a considered and consistent approach to the operation of the provisions of the Act, the Revenue Commissioners have issued written operational instructions in the form of an instruction manual on the Criminal Justice (Surveillance) Act 2009 which was issued in July 2010. A copy of that manual was made available to me. That manual identifies the criteria for the use of surveillance and sets out in detail approved procedures and the procedures to be observed by

nominated officers. It also provides, in an appendix, details of the statutory law relating to surveillance.

An examination of the documents and records demonstrated that in the majority of cases the usage by the Revenue Commissioners related to tracking devices under section 8. During the relevant period there had been a number of applications under section 5 and since those applications were relatively few I was able to review the documentation and records relating to all those applications. Applications under section 5 were based upon information on oath of superior officer specifying the grounds and the format followed in the applications was almost identical to the format ultimately identified in Statutory Instrument No. 360/2010. The authorisation granted to the Revenue Commissioners under section 5 in each instance was in writing and specified the particulars required in section 5, sub-section (6) of the Act. A review of all of the section 5 authorisations identified that in each instance the particulars of the surveillance device was identified, the person, place or thing which was to be the subject of the surveillance was identified, the name of the superior officer to whom it was issued was identified and the conditions including the duration were identified. The duration varied dependent upon the nature of the surveillance required. As with An Garda Siochana the grant of an authorisation did not necessary result in the activation of a device as the circumstances which gave rise to the application and the grant of the authorisation had altered by the time it came to place or to activate the surveillance device.

No use of section 6 or section 7 of the Act was made by the Revenue Commissioners during the period under review.

A number of approvals for the use of tracking devices under section 8 were granted to officers of the Revenue Commissioners during the period under review.

The number of approvals granted under section 8 was in small double figures. All the documentation and records in relation to such approvals were available and on a random basis I chose 33% of the approvals for review. In each and every instance applications for approval were made to an officer of the Revenue Commissioners of not less than principal officer. The principal officers to whom such applications for approval were made were in every instance one of the principal officers directly involved in operating and monitoring the Act for the Revenue Commissioners. It was apparent from consideration of the documentation and records and from the information provided to me that the cost and manpower involved in the use of tracking devices and in particular surveillance devices is such that they are targeted and limited to cases where there is already existing information. In all the cases which were reviewed there was a written record of approval consistent with section 8, sub-section (7) of the Act and there was available to me information and records to confirm the appropriateness of the use of such devices.

During my review nothing came to my attention which would suggest any improper or inappropriate use of sections 4 to 8 of the Act and the procedures in place provide for a consistent and targeted use of the Act.

Conclusions

Each of the three entities entitled to avail of the provisions of sections 4 to 8 of the Act have put in place a procedure to ensure that all use is directed through a designated person, section or branch. In each instance the documentation and records necessary to assist in the review were available in a central location and I was free to choose at random any application, authorisation or approval for consideration. The documentation relating to same was available and when explanations were requested in relation to the individual circumstances they were readily provided. The three

entities have put in place procedures and record keeping to facilitate the ongoing review of the operation of sections 4 to 8. During the first year of operation the Revenue Commissioners have prepared and circulated an operational instruction and an internal policy document within An Garda Siochana is near completion and it is envisage will be circulated before the end of this calendar year. To date, usage of the provisions of the Act by the Defence Forces has been limited but in that organisation applications, authorisations and approvals under the Act are dealt with in one office under the control of one officer and the requirement for written operational instructions or internal policy guidelines is considerably less than in the Revenue Commissioners or in An Garda Siochana.

The introduction of Statutory Instrument No. 360/2010 has established a basis for ensuring that the information upon which authorisations under section 5 are granted is set forth in a consistent and coherent manner.

My consideration of the operation of the Act has also identified that every District judge was circulated with an explanatory memorandum in relation to the operation of the 2009 Act during the year under review. That circulation took place in circumstances where a section 5 authorisation hearing takes place *ex parte* and otherwise in public and can be made to any District judge assigned to any District Court district.

Having reviewed the operation of the Act under the provisions of section 12, I make this report to the Taoiseach and confirm that there are no other matters relating to the operation of sections 4 to 8 of the Act which I consider should be reported.

21.10.2010

Kevin T. Feeney
Judge of the High Court