

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

**REVIEW OF OPERATION OF THE ACT BY THE
DESIGNATED JUDGE FOR THE YEAR FROM 1st
AUGUST, 2011 TO 31st JULY, 2012**

Report

1.1 At its meeting on the 30th September, 2009 the Government designated Mr. Justice Kevin Feeney as the designated Judge pursuant to s. 12 of the Criminal Justice (Surveillance) Act 2009 (the Act). This is the third report that I have prepared as the designated Judge under the Act. The Act was signed into law on the 12th July, 2009 and became operative as of that date. My first two reports covered the periods from the date that the Act came into operation up to the 31st July, 2010 and the following twelve month period, that is, from the 1st August, 2010 to the 31st July, 2011. This report covers the following twelve months, that is, the period from the 1st August, 2011 to the 31st July, 2012.

1.2 In my first two reports I set out in detail the statutory provisions contained in the Criminal Justice (Surveillance) Act 2009 and it is unnecessary to repeat those provisions in detail. Section 12(3) of the Act delegates certain functions to the designated judge which include keeping under review the operation of ss. 4 to 8 of the Act and to report to the Taoiseach from time to time concerning any matters relating to the operation of those sections of the Act.

1.3 The purpose of the Act is set out in its long title and is identified as 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. Surveillance is defined in s. 1 of the Act and s. 3 states:

“A member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners shall carry out surveillance only in accordance with a valid authorisation or an approval granted in accordance with section 7 or 8.”

1.4 The review by me under the Act covers the operation of sections 4 to 8 of the Act. Section 4 deals with applications for authorisation, s. 5 which deals with authorisation, s. 6 which deals with variation or renewal of authorisation, s. 7 which deals with approval for surveillance in cases of urgency and s. 8 which deals with tracking devices. I shall deal with each of those five sections.

1.5 A number of Statutory Instruments have been introduced which are relevant to the operation and function of the Act. Those Statutory Instruments deal with written records of approval, for An Garda Síochána, the Revenue Commissioners and the Defence Forces and are set out in Statutory Instruments No. 275/2009, 290/2009 and 80/2010. District Court Rules dealing with the procedures to be applied by the District Court when dealing with applications for authorisations under s. 5 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 to the operation of the Act.

Review 2011/2012

2.1 In carrying out this review I was in contact with An Garda Síochána, the Defence Forces and the Office of the Revenue Commissioners. I was in written and oral communication with the Director of Intelligence of the Defence Forces. I was also in contact with the Assistant Secretary in charge of Investigations and Prosecutions Division of the Revenue Commissioners and I met with her and another officer from the Revenue Commissioners. I was also in contact with and met the Assistant Commissioner in charge of Crime and Security of An Garda Síochána and met with him and a number of his officers on a number of occasions.

2.2 I attended at the offices of the Investigations and Prosecutions Division of the Revenue Commissioners and examined the documentation relating to each and every use by the Revenue Commissioners of the Act in the relevant twelve month period. The documentation in relation to each and every such use was available and considered by me and all requests for information was provided.

2.3 In the months of September, October and November, 2011, I visited the headquarters of the Crime and Security Branch of An Garda Síochána and spoke to a number of officers. All the documentation relating to the use by An Garda Síochána of the provisions of the Act during the year under review was available and was examined by me. The documentation giving rise to the use of the Act was available in each individual case but due to the number of cases I determined to proceed on the basis that I would make a random selection of individual cases for further and more detailed review. In those cases I arranged to meet with and to speak to a senior investigating Guard involved in each of the operations in respect of which I had made a random selection. In those cases the documentation and material generated as a result of surveillance, including recordings, transcripts and other material, was available for review. As in the previous year, I requested access to original documentation and material and that was made available to me. On this occasion I not only reviewed the documentation and material which was available but also spoke to a senior investigating officer in a number of cases.

2.4 The Act has now been in operation for over three years and a number of developments have occurred as a result of that fact. As part of my review I was in a position to consider three criminal prosecutions and trials which came to Court where material obtained under the provisions of the Act was part of the evidence. I shall return to those three cases later in this report.

2.5 In my first two reports I indicated that An Garda Síochána had sought legal advice in relation to the operation of the Act including consideration of international case law from other common law jurisdictions where surveillance had been permitted by statute and also that consideration was given to the reported decisions in relation to surveillance from the European Court of Human Rights. In both my earlier reports I commented upon the preparation of an internal policy document concerning the operation of the Act which was in preparation. In my last report I indicated that a written protocol being prepared by An Garda Síochána was likely to be available before the end of 2011. That protocol was issued in the format of a written document of the Commissioner's policy in relation to the operation of the Criminal Justice (Surveillance) Act 2009 and was dated the 11th July, 2012. The policy document was circulated to members of An Garda Síochána on the 11th July, 2012. I had previously requested that when the protocol or written policy was completed that it should be made available to me for my consideration. In accordance with my request, a copy of the Commissioner's policy was sent to me. The Assistant Commissioner stated that it had been envisaged that the policy would have been circulated prior to the end of 2011 but, due to a number of legal issues which necessitated the consideration of the law officers, the document was not finally ready for circulation until the 11th July, 2012.

2.6 The policy document deals with the provisions of the Criminal Justice (Surveillance) Act 2009 in detail and lays down in the Commissioner's policy section of the document the procedures and protocols to be followed, which are, in fact, ones that were already in place prior to the circulation of the document. I am aware from my scrutiny of the use made by An Garda Síochána of the provisions of the 2009 Act that there is and has been in place for a considerable period of time a centralised

process for the consideration of applications for authorisation and the renewal of authorisations and for the use of s. 7 orders and for the placing of tracking devices pursuant to s. 8. It is the use and implementation of such procedures that has enabled me to review and consider all applications and uses made by An Garda Síochána under the Act. The oversight and supervision maintained by the Assistant Commissioner in charge of Crime and Security together with his senior officers ensures that the documentation and records concerning the use of the Act are readily available for inspection and scrutiny. It was also clear from the procedures and policy which have been put in place in relation to s. 7 concerning urgent applications that the use of that section is and should only be availed of where an authorisation cannot be obtained from a judge of the District Court.

2.7 In last year's report I indicated that the envisaged protocol or Commissioner's policy document would be for the purpose of ensuring that all and any use of the 2009 Act would be conducted in accordance with identified procedures and would operate through specified senior officers and in such manner as to ensure that a full and comprehensive record would be maintained. Having had the opportunity of considering the content of the Commissioner's policy document it is apparent that that is achieved.

3.1 In both my earlier reports I pointed out that the operations of the provisions of the Act by a body such as An Garda Síochána involved considerable time, effort and cost and required the use of extensive manpower to ensure effective operation. As I have had the opportunity in the past two years of reviewing specific uses of the Act, chosen on a random basis, it is evident that the use and operation of certain surveillance devices requires not only the use of technical equipment but also the

involvement of extensive manpower and in some instances on a twenty four hour basis. The position, therefore, remains the same as was indicated in last year's report, which is that due to the considerable resource implications involved in the use of surveillance devices under the Act, that such surveillance is used in carefully selected and targeted operations.

3.2 In last year's report I indicated that there was currently available on a commercial basis surveillance devices and counter-surveillance devices which can be purchased by members of the public. That availability was confirmed as a result of certain events that occurred prior to last year's report and since that date, the availability of such devices has been further confirmed as a result of investigations and inquiries.

4.1 One of the major developments in the evolution of the use and application of the provisions of the 2009 Act since my last report is that there has now been a number of trials in which the product of surveillance has formed part of the evidence put before the Court. Section 14 of the Act deals with the issue of admissibility of evidence in the specific context of evidence obtained by means of surveillance. In carrying out my review, I considered information available in respect of the three criminal prosecutions where part of the evidence placed before the Court was evidence obtained following the use of the 2009 Act. I will deal briefly with each of those cases. Prior to doing so, it is important to note that the use and operation of surveillance under the 2009 Act will increasingly be the subject of review in open court and arising from rulings and decisions of the Court, additional guidance and knowledge as to the use and application of the 2009 Act will become available.

4.2 The first of the trials which I considered took place in the Circuit Criminal Court and during the course of that trial certain preliminary matters were raised in relation to the s. 4 application for authorisation under the 2009 Act. Following legal argument and consideration by the trial Judge it was ruled that the authorisations in question were lawful and that there had been no illegality in obtaining authorisations under s. 4 of the Act. After that ruling the trial recommenced and following on from certain unrelated matters, including the swearing of a new jury, the accused pleaded guilty to a lesser charge and on a re-arraignment a plea of guilty was entered.

4.3 In the second case which I considered, evidence obtained as a result of the use of the 2009 Act formed part of the book of evidence and the prosecution was at the Special Criminal Court. Prior to the commencement of the trial a plea of guilty was accepted in respect of one of the charges. It followed that there was no consideration or issue in relation to the use or applicability of the 2009 Act.

4.4 The third case which I considered related to a criminal prosecution before the Circuit Court. I had available copies of the transcript of that trial and was in a position to consider the relevant extract from the transcript which dealt with the issue of the use of the 2009 Act. A ruling was made by the trial Judge based on the facts of the particular case which emerged in evidence. The trial Judge held that the issue could be decided based on the facts of the case. The trial Judge ruled that, even though authorisation had been granted under the 2009 Act, the particular facts and circumstances of the case in issue were such that those facts and circumstances did not come directly or indirectly or impliedly within the ambit of the definition of surveillance under the 2009 Act. It followed from that determination that there was no need for any further consideration of the provisions of the 2009 Act as the matters under consideration did not amount to surveillance. This case illustrates the

importance of the definition of surveillance in the 2009 Act and that definition is likely to be the subject of further judicial consideration.

The Defence Forces

5.1 In last year's report I indicated that there had been a marginal increase in the usage by the Defence Forces of the provisions under the Act in the year under review as opposed to the previous year. This year, as a result of an oral discussion with the Director of Intelligence and from correspondence received, I am satisfied that there was not any use of the provisions of the Act which would require to be reviewed in this report.

The Revenue Commissioners

6.1 In October 2011 I visited the Investigations and Prosecutions Division of the Revenue Commissioners. I met with the Assistant Secretary of the Investigations and Prosecutions Division and another senior official of the Revenue Commissioners. The relevant documentation and records relating to the use by the Revenue Commissioners for the period 1st August, 2011 to the 31st July, 2012 was present. As was the case at the time of my last report, the Revenue Commissioners continue to use a system whereby all uses under the Act are made through one office and are made using the instruction manual on Criminal Justice (Surveillance) Act 2009 which was issued by the Revenue Commissioners in July of 2010. That instruction manual remained in force for the year under review and it provides that any application for use of a surveillance device by a Revenue official in support of an investigation or Revenue operation must be grounded on an application for such use and must be submitted to a Principal Officer being one of the officers nominated for that purpose.

There are two nominated officers and both are Principal Officers. The implementation of the system provided for in the instruction manual ensures that all records in relation to the use by the Revenue Commissioners of the provisions of the 2009 Act are supervised by a small number of senior personnel who are responsible for the maintenance and preservation of the records.

6.2 I examined the records and documents which were present in the office of the Investigations and Prosecutions Division of the Revenue Commissioners and they covered each and every use by the Revenue Commissioners of the provisions of the Act during the year.

6.3 In the year under review all usage by the Revenue Commissioners of the provisions of the Act related to s. 8 usage. Section 8 provides for the use of tracking devices. Due to the relatively limited number of occasions on which the Revenue Commissioners used the provisions of the 2009 Act, I was able to review the records relating to each and every usage. There was an increase in relation to the number of approvals granted for the use of tracking devices under s. 8 in the year under consideration. However, the number of approvals was of a sufficiently limited number that I was able to review each case where an approval was granted. The records maintained identified the particulars of the tracking device that was approved, the person, vehicle or thing that was to be monitored and the officer of the Revenue Commissioners to whom the approval was granted. The records also identified the conditions placed upon such approval and the duration in respect of which such approval was in place together with the time at which the approval was granted. I was provided with information in relation to the deployment of the devices which were approved and the nature, extent and outcome of such investigations. The tracking devices were deployed in relation to operations covering the illegal importation of

goods into Ireland, including illegal drugs. As I reported in my last report, given the nature of smuggling and the illicit importation of goods into the jurisdiction and the efforts made by persons smuggling goods into this country to avoid the payment of duties and taxes, it was not surprising that the majority of the uses of the provisions of s. 8 of the Act by the Revenue Commissioners related to tracking devices. In the year under review all uses were under s. 8. The use of tracking devices resulted in the seizure of not only illegally imported goods but also illegal drugs and cash.

6.4 Having reviewed each of the cases where the Act was used by the Revenue Commissioners during the relevant year, I was able to identify that there was a written record of approval consistent with s. 8, subs. (7) of the Act in every case. In all instances the period provided for, for the use of such tracking devices, was for four months or less and there was information and records available to confirm that such tracking devices were approved where there was reasonable grounds to do so. During my review nothing came to my attention which would suggest any improper or inappropriate use of ss. 4 to 8 of the Act by the Revenue Commissioners and it remains the position that the procedures which are in place provide for a documented, consistent and targeted use of the provisions of the Act.

An Garda Síochána

7.1 Earlier in this report I have already dealt with material matters which occurred in relation to the Act of 2009 during the year under consideration in relation to the use and application of the Act by An Garda Síochána. The first was the publication and circulation of the Commissioner's policy. That set out in writing and formalised the procedures and processes which were already in place and which are referred to in my first two reports. The second noteworthy occurrence in relation to the use made by

An Garda Síochána of the 2009 Act which occurred during the year under review was the fact that the Act had been in operation for a sufficiently long period that a stage has now been reached where evidence obtained following authorisations and approvals made and granted under the Act are now forming part of the evidence considered at trial. This is likely to increase in coming years and insofar as it impacts on the review of the operation of the Act will require ongoing consideration.

7.2 In my first two reports I had stated that An Garda Síochána operated a centralised process for all instances of surveillance carried out under the Act and that there was a centralised written record of all locations and instances where there had been applications for authorisations, variations or renewals of authorisations or approvals for surveillance in cases of urgency and the use of tracking devices. That process continued throughout the year under review. The process was formalised in the Commissioner's policy document of the 11th July, 2012 which was at the very end of the year under review. However, consideration of the information and documents available confirms that up to the date of the circulation of the Commissioner's policy, the same procedures and processes were followed and already in place.

7.3 I met with the Assistant Commissioner in charge of the Crime and Security Division and certain senior officers on a number of occasions. I also arranged, after having randomly selected a number of cases from the statistical database, to interview the senior investigating officer in charge of certain investigations and to have access to original documentation. I received considerable assistance from the senior officers in the Crime and Security Division of An Garda Síochána and arrangements were made for other senior officers to attend at Garda Headquarters so that I could review individual cases and have access to original material including that produced as a result of surveillance.

7.4 As the same procedures have now been in place for a number of years, it is possible to compare the twelve months under review with the two previous twelve month periods. To assist me in carrying out that review, data was produced which identified each and every instance when the Act was used in each of the three twelve month periods, including the date of application, the date of authorisation, the date of approval, the nature of the device, the person, place or thing covered by the authorisation or approval, the duration provided for in the authorisation or approval together with other relevant details. As was the case with last year's report, the nature of the data enabled me to choose a number of cases on a random basis from the records which had been prepared. In the cases which I selected, I considered the documentation and in a selected number of cases not only was the documentation considered but I arranged to meet with and to interview a senior investigating officer.

7.5 Section 4 applications are considered by a District Judge for authorisation under s. 5 of the Act and it is for the District Judge to grant or refuse such application. I had available the original documentation in relation to each of the applications but I did not review that documentation other than to ascertain that the relevant documentation used in such applications for authorisations was retained and available as part of the records. It is for the District Judge hearing such an application to consider and determine whether or not to grant an application and he has available, if necessary, oral evidence to deal with any matters that arise. Such hearings are held in private.

7.6 Part of the records maintained by An Garda Síochána is a record of refusals of applications for authorisations applied for by senior Gardaí where no application for authorisation was pursued. There are a small number of such instances in each of the three years under review and there has been a slight increase in the numbers.

However, the numbers involved are so small that it is clear that the detailed procedures and processes in place are such that in the vast majority of cases where a senior officer formally applies for an application to be made under s. 5, that such application is approved. I examined the small number of cases where applications were refused and the reasons for refusal included such reasons as the object in respect of which such application was being made was no longer in the jurisdiction, or that evidence could be obtained or had been obtained by other means or that arrests had already been made. In each instance a reason for the refusal was identified and I considered such reasons and in each case the reason for the refusal of the application for authorisation was based upon an identified and clear rationale.

7.7 Under s. 5 of the Act an application under 4 for an authorisation is made ex parte and in private to a District Judge. During the year under review there was a considerable increase in such applications, the number increasing by almost threefold from the previous year. The documentation and records in relation to each of those applications was available and I chose approximately 15% of the cases where authorisations were granted under s. 5 for detailed review. In each of those cases the original documentation was available and formed part of the records maintained by An Garda Síochána. The cases which I reviewed all had an identified period of duration for the surveillance. In all cases where the investigation was ongoing when the authorisation date expired, there was a fresh and new application made to the District Court wherein the existence of the previous order was disclosed. It was also the case that in a number of instances where authorisations were granted that the device authorised was not deployed. In a number of cases where I carried out a detailed review and where such had occurred, I was provided with a satisfactory explanation for the reason why such device was not deployed. The fact and reason

why such device was not deployed was detailed in writing. Some of the cases reviewed related to audio and video surveillance and some related solely to audio surveillance. Where video surveillance was authorised, I considered whether the surveillance by video could be viewed as the least intrusive means available having regard to the circumstances of the case and whether or not it could be considered proportionate. I also considered whether the duration was reasonably required to achieve the objectives. In carrying out this examination on a randomly selected number of cases, I had available the documentation, the original files and the product of surveillance. In a number of cases I met with and spoke to a senior investigating officer. In each of the cases which I reviewed I was satisfied that the least intrusive means available had been used and that the application had been proportionate and for a reasonable duration. As was the case in previous years, the cost and expense involved in the obtaining of s. 5 authorisations and the subsequent deployment of surveillance devices together with the Garda backup required to benefit from any product produced by such surveillance is such that the cases chosen for surveillance are cases involving serious criminal activities and State security. The deployment, operation, the requirement for an evidential chain and the security of the Garda personnel involved in such operations, when taken together, result in the use and deployment of audio and video surveillance devices being an expensive and time consuming process.

7.8 In randomly selected cases where devices were deployed, I had access to the material or product generated from such surveillance. The position remains the same as was the case when I prepared last year's report in that I was able to identify real and obvious tangible benefits accruing to criminal investigations arising from such surveillance both in relation to crime and national security. That benefit arises for

both evidence being obtained which can be used in subsequent criminal prosecutions but also results in information being obtained material to ongoing criminal activities and national security.

7.9 An examination of the data also demonstrates that the duration in respect of which application was made for the use of surveillance devices was often for a very limited period. This follows from two inter-related matters. First, that the application is made for a period that is deemed reasonably required to achieve the objectives sought by such surveillance and secondly, that applications for authorisation are not made until there is detailed and persuasive information available to demonstrate that the cost and expense of deploying such device or devices is worthwhile and that thereafter a limited period can be identified.

7.10 There were no applications for variation or renewal of authorisations made during the year under review. As I previously indicated there were a number of instances where fresh applications were made in respect of the same suspect or investigation but those applications were made not by use of s. 6, but rather by applications under s. 4 for a new authorisation under s. 5 and were made to the District Court. That process ensured that the District Judge hearing the application would have to consider a new application and be satisfied that at the time of such application that the surveillance being sought should be granted and it was open to the District Judge to impose any conditions as the Judge considered appropriate.

7.11 Section 7 of the Act of 2009 provides for approval for surveillance in cases of emergency. That section facilitates the carrying out of surveillance in cases of urgency without an authorisation by a court under s. 5 but is limited to a period not exceeding 72 hours. There was a significant reduction in s. 7 approvals in the year under review. There were only a small number of such approvals in the full year and

I was therefore able to consider the facts and circumstances of every approval. It would appear that the reason for the decline in the number of s. 7 authorisations is that with experience and usage, that it has become possible to make urgent applications to the District Court under s. 5 even at short notice. Because s. 7 is for use in “cases of urgency”, I had particular regard to the duration of the period granted under s. 7 approvals. In all but one case the period granted was 24 hours or less and in some instances was for a period of no more than 2 hours. In a number of cases where s. 7 approvals were granted for a period of 24 hours or less and where it was considered appropriate to continue the surveillance of such person or place, applications were made under s. 5. In the only case where the duration of the s. 7 approval was greater than 24 hours, I was provided with an explanation as to the circumstances why such duration was granted, both as to the location of the surveillance and the availability of a District Judge in the particular rural area.

7.12 Section 8 of the Act of 2009 deals with tracking devices. The number of approvals for the use of tracking devices in the year under consideration was slightly less than the previous year but an examination of the data indicates that there is very little variation in the total numbers between each of the three years which I have considered in my reports.

7.13 Due to the fact that the most commonly used provision of the 2009 Act is the use of tracking devices, and that, therefore, there are a greater number of approvals under s. 8 than under any other section, I conducted a randomly selected review of some 10% of the s. 8 approvals. I also considered the data available in relation to every one of the s. 8 approvals. As was the case with my previous report, the documentation and information available in relation to s. 8 tracking devices demonstrated that the use of tracking devices has been of assistance in providing

information and intelligence into various constituents of illegal activity including information and evidence in relation to the movements and whereabouts of persons involved in serious criminal offences, the location and movement and place of sale and distribution of illegal drugs. Section 8 devices are also used in matters relating to the security of the State. The overall data demonstrates that even though s. 8 provides that approval for tracking devices can be granted for a period of not more than four months, that in the vast majority of cases the period granted is considerably less. The maximum period of four months was granted in less than 15% of the s. 8 approvals. In a significant number of cases the period granted was for a number of weeks rather than months.

7.14 The review provided for in s. 12 of the Act to be carried out by a Judge of the High Court is a review of the operation of ss. 4 to 8 of the Act. I have adopted a different and varied approach when carrying out my duties in each of the three years. I have always sought and had made available to me records, data, documents and information concerning each and every usage. I continue, where there are a substantial number of authorisations and approvals, to select a random number of cases for more detailed consideration. That has included access to a senior investigating officer in some cases.

7.15 Section 5 applications are heard by a District Judge and the Judge hearing such application must be satisfied that it is reasonable to issue an authorisation and can do so on such terms and conditions as the Judge considers appropriate. From my examination of the documentation and records it is clear that the applications for such authorisations are made in writing and there is sworn information available to support such applications and that there is, where an authorisation has been granted, a record of such authorisation. It is also the case that when the period covered by such

~~authorisation has expired and where an operation is ongoing that the procedure~~
followed is that a fresh application is made where the District Judge hearing that application must be satisfied based upon the information available at the time of that application as to whether an authorisation can be granted.

7.16 Section 7 deals with approvals for a limited period in cases of urgency. As approvals under that section are not subject to consideration by the District Court, I have had particular regard to those approvals. There has, in the year under consideration, been a significant reduction in the number of such approvals and the period of approval contained in the s. 7 approvals has been limited. In each of the cases where s. 7 approval was granted, the documents and records establish that urgent approvals were required in circumstances where information crystallised as to the potential location or event which was to be the subject of surveillance immediately prior to the actual intended surveillance. It remains the case that given the limited number of s. 7 approvals and the information available concerning the nature of the intended surveillance that such approvals are being used by An Garda Síochána in circumstances where there was neither time nor circumstances which would allow or permit for an application to the District Court. This is confirmed by the fact that even within the limited number of s. 7 approvals, there were a number of instances where there was a subsequent application to the District Court when there was time available and where there was a need that the surveillance should continue after the period provided for in the s. 7 approval.

7.17 There was a small number of cases where applications for approval to use a tracking device under s. 8 was refused by a superior officer in accordance with the provisions of s. 8. The reasons for such refusal included an inability to identify a location where the tracking device could be deployed, insufficient information or the

requirement for additional intelligence to justify the use of a device. Section 8(9) of the Act states:

“A superior officer who approves the use of a tracking device under this section shall make a report as soon as possible and, in any case, not later than 7 days after its use has ended, specifying the grounds on which the approval was granted, and including a copy of the written record of approval and a summary of the results of the monitoring.”

In the cases which I selected for consideration where s. 8 approvals had been granted and where there had been a deployment, I confirmed that where the use of the tracking device had ended, as of the date of my review, the records identified that fact and contained a report to the Assistant Commissioner within the statutory period provided for in the Act.

7.18 During my review of An Garda Síochána’s use of ss. 4 to 8 of the Act, nothing came to my attention that would suggest any improper or inappropriate use of the provisions of the Act. The procedures adopted and followed by An Garda Síochána ensure that the documentation required to be kept and maintained under the Act is kept and maintained and is available at a central location in a readily available format.

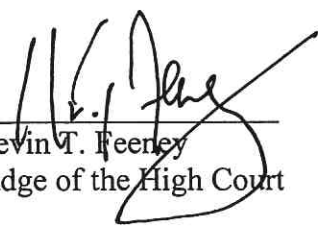
Conclusions

8.1 As is apparent from the contents of this report, each of the three parties entitled to avail of the provisions of ss. 4 to 8 of the Act are discharging their obligations under the Act when availing of their entitlements under ss. 4 to 8. Having reviewed the operation of the Act as the designated Judge pursuant to s. 12 of the Act, I make this report to the Taoiseach and confirm that there are no other matters relating to the operation of ss. 4 to 8 of the Act which I consider should be reported.

8.2 I would like to confirm that I received full and thorough co-operation from the senior officers and members with An Garda Síochána, the Revenue Commissioners and the Defence Forces responsible for the operation and implementation of the provisions of the Act and that those persons greatly assisted me in the preparation of this report.

8.3 As pointed out earlier in this report, as evidence gleaned as a result of surveillance carried out under the Act of 2009 comes to be used in criminal trials and considered during the course of those trials, further and additional matters will arise in relation to the use of devices permitted under the Act. The nature and extent of the definition of surveillance and the fact that s. 3 of the Act of 2009 provides that a member of An Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners shall carry out surveillance only in accordance with a valid authorisation or an approval granted in accordance with ss. 7 or 8 of the Act means that the issue of what is and what amounts to surveillance will arise in future criminal prosecutions.

8.4 I have now conducted the review of the operation of this Act under s. 12 for three years and it is evident that the use of surveillance and monitoring devices is and remains an important asset in the investigation of arrestable offences and the prevention of suspected arrestable offences and the safeguarding of the State against subversive and terrorist threats.


Kevin T. Feeney
Judge of the High Court

Date: 8th January, 2013