

**To: An Taoiseach, Enda Kenny, T.D.**

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

**REVIEW OF THE OPERATION OF THE ACT BY THE  
DESIGNATED JUDGE FOR THE PERIOD 1<sup>ST</sup> AUGUST,  
2015 TO 31<sup>ST</sup> JULY, 2016**

1. On 17<sup>th</sup> day of May, 2016, I was appointed the “*Designated Judge*” for the purpose of undertaking the duties specified in s. 12(3) of the Act which are to:-
  - (a) keep under review, the operation of ss. 4 - 8 of the Act; and
  - (b) report to An Taoiseach from time to time, and, at least, once every twelve months concerning any matters relating to the operation of ss. 4 – 8 of the Act which the Designated Judge considers should be reported.

This report covers the period 1<sup>st</sup> August, 2015 to 31<sup>st</sup> July, 2016. In the case of An Garda Síochána, the Revenue Commissioners, the Defence Forces, and An Garda Síochána Ombudsman Commission (GSOC), I was given the name of a designated point of contact for the purpose of carrying out my duties as the Designated Judge. In this report, I will refer to each such person as “*the designated contact*”.

2. Earlier reports made by the late Mr. Justice Kevin Feeney set out in detail the statutory scheme, and in particular the provisions of ss. 4 – 8 of the Act of 2009, which are relevant for the purpose of this report. He also set out the statutory instruments relevant to the operation of the Act. Therefore, I do not propose to repeat those matters here.
3. Later in this report, I refer to specific meetings with members of An Garda Síochána, the Revenue Commissioners and the Defence Forces. As I was informed by the designated contact in An Garda Síochána Ombudsman Commission, that it did not conduct any activity in accordance with the Act during the period of interest or at any other stage, it was not necessary for me to attend at the office of the Commission or meet the designated contact therein.

4. The Act is used extensively for the purpose of detecting and combating serious criminal activity including organised crime and activities subversive to the State, terrorist activities and serious Revenue offences. From my meetings with senior personnel in the relevant organisations and having reviewed the documentary material provided to me, I am satisfied that significant intelligence has been gathered by means of the Act which has either prevented serious crime or assisted in bringing successful prosecutions against the perpetrators of crime.

5. The activities carried out under the relevant provisions of the Act involve the obtaining of intelligence in matters touching serious crime and the security of the State and it is of importance that nothing in this report should compromise this work in a way which would benefit criminals, whether they be members of organised crime gangs, terrorists, or parties involved in serious Revenue offences resulting in significant loss to the exchequer. I am aware that s. 10(6) of the Act provides that the Taoiseach shall ensure that a copy of this report is laid before each House of the Oireachtas not later than six months after it is made. I am also aware that by virtue of s. 12(7), the Taoiseach may exclude from the report to be laid before the Houses of the Oireachtas any matters that would be prejudicial to the security of the State after consulting with the Designated Judge.

6. Accordingly, this report will, so far as possible, comprise a review and make observations in a way which does not readily identify designated contacts or other authorised personnel or the particular operation which may have been subject to a court authorisation for surveillance or the approval of a surveillance or of tracking devices.

7. With regard to each of the bodies whom I met, I can confirm that I was given complete access to all original documentation in respect of each and every file and

any queries raised by me were adequately dealt with. I can confirm that I found no reason to investigate any case in which an authorisation was issued under s. 5 or renewed or varied under s. 6 or an approval granted under s. 7 or s. 8 in accordance with s. 12(8) of the Act. I also confirm that the Referee appointed to s. 11 of the Act has not referred any case to me pursuant to section 11(5)(d).

## AN GARDA SÍOCHÁNA

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8. On 5<sup>th</sup> September, 2016, I attended Garda Headquarters, Phoenix Park where I met with the designated contact and a number of senior officers with responsibility for criminal surveillance. All files relating to applications made under the Act for the relevant period were produced for my inspection and I was also furnished with spreadsheets showing a breakdown of the applications made under ss. 4, 5, 7 and 8, including s. 8 refusals. In addition to the statistics I was also furnished with a document setting out the Commissioner's policy in relation to the operation of the Act which is distributed to Garda Stations around the country. It sets out in a general way, the operation of the Act and also the Commissioner's policy in relation to its operation. I am satisfied that the document shows an understanding of the Act and its importance in the gathering of evidence in connection with the investigation of arrestable offences, the prevention of suspected arrestable offences and safeguarding the security of the State against subversive and terrorist threats.

9. I would like to acknowledge the cooperation which I received from the designated contact and other senior officers of An Garda Síochána involved in operations relevant to the Act.

10. I was given details as to the manner in which information was stored and records maintained and I am satisfied that this was done in a secure and proper manner.

11. The records show that in the relevant period there was one s. 4 refusal and there were 41 s. 5 applications granted. Five s. 7 applications were granted and 83 under section 8. There were three s. 8 refusals. All the records relating to applications made were produced for my inspection. I am satisfied that each

application was made in accordance with the provisions of the Act and based on the particular circumstances of each case. Discretion was used in the making of the applications. For example an examination of the files showed that while s. 5 authorisations or variations under s. 6 can be for a maximum of three months that in some cases authorisation was sought for a shorter period on the basis that this was sufficient. Likewise the use of tracking devices was sometimes approved for a period of less than the four months allowed by s. 8. The files in respect of all of the refused applications under s. 4 and s. 8 were inspected and I also inspected the all the files with respect to s. 7 approvals for surveillance given in cases of urgency. So far as s. 8 applications were concerned, I inspected the majority of the files which were selected by me on a random basis. I am satisfied that they were representative of the files in general. All the documentation in support of applications under all of the above sections was in order and proper reports were submitted in accordance with the provisions of the Act.

**12.** I was given a tour of the National Surveillance Unit at Garda Headquarters dealing with matters covered by the Act and met personnel involved in both the carrying out of surveillance activity and the installation of tracking devices.

**13.** I was impressed by the professionalism and dedication of the members of An Garda Síochána involved in this work, some of whom face personal danger in carrying out their work, which they do with great professionalism.

**14.** It is evident from my discussion with the relevant officers in An Garda Síochána and from my perusal of the documentation that the work carried out by An Garda Síochána and other State organs under this Act is of great benefit in the fight against crime in general and organised crime and activities threatening the security of the State in particular.

15. I would like to record my thanks to the Assistant Commissioner of An Garda Síochána and other senior officers for their assistance in preparing this report and making all the relevant files available to me and having the relevant officers present to deal with any queries which I had.

## REVENUE

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1. On 7<sup>th</sup> September, 2016, I attended at the Investigations and Prosecutions Division of the Revenue Commissioners and met with the person who was designated as the contact in that Division whom I should meet and I also met with a person who was a “superior officer” within the meaning of the Act and who produced for me all the revenue records relating to the Act within the relevant period. No application was made by Revenue for an authorisation pursuant to s. 4(3) of the Act.
2. A number of approvals were sought for tracking devices pursuant to s. 8 of the Act. The relevant paperwork in respect of each of these applications was produced for my inspection and I am satisfied that each application was properly approved by a superior officer and that the steps taken were in accordance with the provisions of the Act and that a proper report was furnished in each case in accordance with the provisions of s. 8(9) of the Act and furnished to the appropriate officer in the Revenue Commissioners in accordance with section 8(10). Within the relevant period approvals were sought for tracking devices in two cases which were not granted. In all a total of 26 approvals were given in the relevant period.
3. I am satisfied that, in respect of the Revenue Commissioners, the provisions of the Act were complied with in every respect. Guidelines and procedures for conducting surveillance have been published by the Revenue and were last updated in April 2016. They provide an accurate and useful guide to Revenue personnel in carrying out their duties under the Act.
4. I received complete cooperation and assistance from the Revenue for the purpose of completing this report and I am satisfied from the information provided to me that the greatest care is being taken by the relevant personnel in Revenue to ensure



that the provisions of the Act are fully complied with and that a full written record is maintained in each case in which the statutory powers under the Act are exercised.

5. I am satisfied from the information received that there has been no improper or unlawful use of the powers given to the Revenue under the Act and that all records are carefully prepared and maintained. I am also satisfied that all surveillance equipment in use under the Act is securely stored, distributed and retrieved so as to prevent either the information or tracking devices from coming into the wrong hands.

6. I would like to record my thanks for the assistance of the Revenue Commissioners in providing the necessary assistance to me for the purpose of carrying out my inspection as the designated judge.

**DEFENCE FORCES**

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16. On 8<sup>th</sup> September, 2016, I attended at Defence Forces Headquarters, McKee Barracks, where I met with the person designated as the contact for the purposes of the Act. The designated contact was a "*Superior Officer*" within the meaning of the Act and the person authorised to apply to a judge for authorisation to carry out surveillance under the Act. The meeting was also attended by a senior member of the National Security Intelligence Unit of the Defence Forces.

17. I was informed that no authorisation for a tracking device issued within the relevant period and that one application was made to the court under s. 4 of the Act to authorise surveillance in accordance with the provisions contained in the Act. The authorisation was for a three month period but the operation concluded within one day. No surveillance equipment was deployed and the operation involved the use of a video camera and/or the taking of still pictures.

18. The file in relation to the surveillance was made available to me and I am satisfied that all the provisions required under the Act were complied with. The operation concerned a matter involving the security of the State.

19. I wish to acknowledge the cooperation which I received from the Defence Forces in preparing this report and I am satisfied that proper records have been maintained.

*John J. Mahoney*  
29-11-16.