**Observations of Ireland on the Questionnaire related to:**

***The right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is***

***not lawful.***

**1. a) If your State is a party to the International Covenant on Civil and Political Rights, how is Article (94) of the Covenant incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption.**

**If yes please provide the legislation, their wording and year of adoption.**

Yes, Ireland is a party to the ICCPR which it signed 1973 and ratified it in 1989. Furthermore, Ireland was one of the first States to sign and ratify the European Convention on Human Rights in 1950 and 1953 respectively. This was enacted into domestic Irish law by the European Convention on Human Rights Act, 2003.

Article 9.4 of the ICCPR is reflected in Article 40.4 of the Constitution of Ireland, the basic law of Ireland. The Constitution was adopted by referendum in 1937. Under Article 34 of the Constitution, both the High Court and the Supreme Court have the power to assess and determine the validity of any law in terms of its constitutionality. In the event that a Court concludes that a particular law is unconstitutional, that law ceases to have any legal validity.

The text of Article 40.4 is set out below.

*4 1° No citizen shall be deprived of his personal liberty save in accordance with law.*

 *2° Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.*

 *3° Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it.*

 *4° The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior judge of that Court who is available so directs in respect of any particular case, consist of three judges and shall, in every other case, consist of one judge only.*

 *5° Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion.*

 *6° Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person.*

As previously stated access to the remedy of Habeas Corpus is guaranteed by Article 40 of the Irish Constitution.

Specific provisions relating to the detention are non-EEA nationals are also provided in legislation.

Detention of persons for the purpose of their removal from the State

In accordance with section 5 of the Immigration Act 1999 persons detained for the purpose of their removal from the state can be held for no longer than 56 days.

The Act states the following:

*(1) Where an immigration officer or a member of the Garda Siochana, with reasonable cause, suspects that a person against whom a deportation order is in force has failed to comply with any provision of the order or with a requirement in a notice under section 3(3)(b)(ii), he or she may arrest him or her without warrant and detain him or her in a prescribed place.*

[...]

*(5) Where a person detained under this section institutes court proceedings challenging the validity of the deportation order concerned, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, and may make any such release subject to such conditions as it considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:*

*(a) that the person reside or remain in a particular district or place in the State,*

*(b) that he or she report to a specified Garda Siochana station or immigration officer at specified intervals,*

*(c) that he or she surrender any passport or travel document in his or her possession.*

*(6) (a) A person shall not be detained under this section for a period or periods exceeding 8 weeks in aggregate.*

*(b) The following periods shall be excluded in reckoning a period for the purpose of paragraph (a): (i) any period during which the person is remanded in custody pending a criminal trial or serving a sentence of imprisonment,*

*(ii) any period spent by the person on board a ship, railway train, road vehicle or aircraft pursuant to this section, and (iii) if the person has instituted court proceedings challenging the validity of the deportation order concerned, any period spent by the person in a place of detention between the date of the institution of the proceedings and the date of their final determination including, where notice of appeal is given, the period between the giving thereof and the final determination of the appeal or any further appeal therefrom or the withdrawal of the appeal or, as appropriate, the expiry of the ordinary time for instituting any such appeal.*

Detention of persons refused leave to land in the State

Similar provisions exist in relation to the detention of person's refused leave to land. Non-nationals arriving in Ireland “by air or sea” are required to present themselves to an immigration officer and apply for “permission to land or be in the State”.An immigration officer may refuse to give permission to land on any one of the grounds set out in section 4 (3) (a) to (k) of the Immigration Act 2004,

Section 5 (2) of the Immigration Act 2003 provides that a person over the age of 18 who is refused permission to land, or whom an immigration officer or a member of the Garda Síochána “with reasonable cause suspects has been unlawfully in the State for a continuous period of less than 3 months” may be arrested by an immigration officer or a member of the Garda Síochána.

In practice, persons refused leave to land are held for very short periods (in most cases overnight). There is a requirement in law to remove such persons as soon as practicable.

The Act states the following:

 *(2) (a) Subject to paragraph (b), a person to whom this section applies may be arrested by an immigration officer or a member of the Garda Sıochana and detained under warrant of that officer or member in a prescribed place and in the custody of the officer of the Minister or member of the Garda Siochana for the time being in charge of that place.*

*(b) Paragraph (a) shall not apply to a person who is under the age of 18 years.*

[...]

 *(3) (a) A person arrested and detained under this section may, subject to subsection (4), be detained only until such time (being as soon as practicable) as he or she is removed from the State in accordance with this section but, in any event, may not be detained for a period exceeding 8 weeks in aggregate.*

*(b) The following periods shall be excluded in reckoning a period for the purpose of paragraph (a):*

*(i) any period during which the person is remanded in custody pending a criminal trial or serving a sentence*

*of imprisonment,*

*(ii) any period spent by the person on board a ship, railway train, road vehicle or aircraft pursuant to this*

*section, and*

*(iii) if the person has instituted court proceedings challenging the validity of his or her proposed removal from the State, any period spent by the person in a place of detention between the date of the institution of the proceedings and the date of their final determination including, where notice of appeal is given, the period between the giving thereof and the final determination of the appeal or any further appeal therefrom or the withdrawal of the appeal or, as appropriate, the expiry of the ordinary time for instituting any such appeal.*

*(4) Where a person detained under this section institutes court proceedings challenging the validity of his or her proposed removal from the State, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, and may make any such release subject to such conditions as it considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:*

*(a) that the person reside or remain in a particular district or place in the State;*

*(b) that he or she report to a specified Garda Siochana station or immigration officer at specified intervals;*

*(c) that he or she surrender any passport or travel document in his or her possession.*

Detention of asylum seekers

Insofar as asylum seekers are concerned the detailed statutory provisions relating to the detention of asylum seekers are set out in Sections 9 and 10 of the Refugee Act 1996 (as amended) and in the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000. (legislative provisions listed at appendix)

**2. Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalisation, immigration detention, or any other reason?**

Yes, all forms of deprivation can be the subject of ‘Habeas Corpus’ proceedings.

**If yes, please provide the list of the forms of detention to which the mechanism is applicable.**

The Habeas Corpus remedy applies to all forms of deprivation of liberty.

For example in the criminal justice context it is available to

* persons arrested and held in the custody of the Garda Síochána (police) for the purposes of charge with a criminal offence
* persons arrested and detained by the Garda Síochána in connection with the proper investigation of offences eg section 4 of the Criminal Justice Act 1984, section 30 of the Offences against the State Act 1939, section 2 of the Criminal Justice (Drug Trafficking) Act 1996 and section 50 of the Criminal Justice Act 2007
* persons remanded in custody pending trial
* persons held in custody pre-extradition
* persons undergoing imprisonment following conviction and sentence

**3. Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?**

Yes, persons detained may bring proceedings before a Court at any stage.

Generally speaking, anyone in detention has a right to contact their legal representative with a view to bringing court proceedings.

In relation to the detention of asylum seekers under Section 9 (10) of the Refugee Act 1999 the authorities are required, as soon as practicable, to bring a detained person before the Courts.

1. **Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?**

Yes the High Court can order the immediate release of a person detained where the detention has been challenged successfully. The Habeas Corpus mechanism provides for release and compensation for unlawful detention. The remedies for unlawful detention include damages awarded by the courts.

Compensation is a matter for the individual should they wish to proceed with an action against the Irish State. This matter would be determined by the Courts.

Inter alia, Article 40.4 provides for the release of a person whose detention is deemed to be unlawful and such release must take immediate effect (*State (Trimbole) V Governor of Mountjoy Prison [1985] I.R. 550 at 567*). Also, it is open to anyone to take a civil action against the state authorities for unlawful detention. A person may recover damages from the State for false imprisonment and/or violation of constitutional rights if they can establish that their detention was not in accordance with law.

**5. Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your country’s domestic law?**

Yes, the procedure under Article 40.4 2° provides that the complaint may be made by or on behalf of any person. The Supreme Court in *Application of Woods [1970] I.R. 154* has made it clear that a complaint may be lodged by an individual on behalf of someone else. There is no requirement that the person making the application on behalf of another be a legal representative and such a third party has the right to state the grounds on which the allegation of illegality is based and the Court may require that person to furnish such additional information or assistance as it thinks fit.

**6. What are the formal requirements and procedures for a detainee to invoke the right to bring proceedings before court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.**

Article 40.4.1 of the Constitution provides that no citizen shall be deprived of his personal liberty save in accordance with law. Article 40.4.2-4 sets out the procedure or mechanism by which a person alleging an unlawful detention may challenge such detention.
A detainee invokes the right to bring proceedings before a court for a decision on the lawfulness of the detention by making an ex parte application to the High Court for what is called a conditional order. All such ex parte applications are treated with the utmost urgency and a Judge will hear the application during the court day or out of
hours. Whilst applications for release under Article 40.4 are usually grounded on affidavit, a simple letter from the detainee or someone acting on his/her behalf to a judge of the High Court will be sufficient to trigger an Article 40.4 inquiry.

A conditional order is one which orders the respondent (ie the person / authority alleged to be detaining the detainee) to "produce the body" of the detainee in court, ie bring him / her physically before the court and "certify in writing the grounds of his detention" at a specified time and date, usually within hours of the making of the conditional order. There are no other formal requirements. The basis for the application is found in Article 40 (4) of the Constitution. The procedure is set out in Order 84 Rule 2 of the
Rules of the Superior Courts.

A detainee is always facilitated in contacting their legal representative.

**7. Does the legislation provide for a time limit for submitting such application to the court? If so, please indicate what is the maximum time in the number of**

o Days

o Months

o Years

Not applicable

The application is made under Article 40 (4) of the Constitution and there is no time limit for submitting such an application to the court.

**8. Are there any major decisions of your country’s Constitutional or Supreme Courts concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court?**

Yes. Applications to the courts are frequently made in respect of a person deprived of his her liberty. Judgements in these cases are recorded on Courts Service website and published in Irish Law Reports.

**If yes, please provide date and number of decisions and, if possible, a copy of the decision.**

Numerous examples of such decisions can be accessed online at [www.courts.ie](http://www.courts.ie).

**APPENDIX 1 Immigration Law**

**Legislation relating to the detention of asylum seekers:**

**Refugee Act 1996 (as amended)**

**Section 9 (8-16)**

(8) Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that an applicant -

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|   |  | (*a*) poses a threat to national security or public order in the State, |
|  |  | (*b*) has committed a serious non-political crime outside the State, |
|  |  | (*c*) has not made reasonable efforts to establish his or her true identity, |
|  |  | (*d*) intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to [*section 22*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0022.html#sec22) , |
|  |  | (*e*) intends to leave the State and enter another state without lawful authority, or |
|  |  | (*f*) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents. |
|  |  | he or she may detain the person in a prescribed place (referred to subsequently in this Act as “a place of detention”). |

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| (9) The Minister shall make regulations providing for the treatment of persons detained pursuant to this section. |

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|  |  | (10) (*a*) A person detained pursuant to *subsection (8)* shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained. |
|  |  | (*b*) Where a person is brought before a judge of the District Court pursuant to *paragraph (a)*, the judge may— |
|  |  | (i) subject to *paragraph (c)*, and if satisfied that one or more of the paragraphs of *subsection (8)* applies in relation to the person, commit the person concerned to a place of detention for a period not exceeding 10 days from the time of his or her detention, or |
|  |  | (ii) without prejudice to *paragraph (c)*, release the person and the judge may make such release subject to such conditions as he or she considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions: |
|  |  | (I) that the person resides or remains in a particular district or place in the State, |
|  |  | (II) that he or she reports to a specified Garda Síochána station or immigration officer at specified intervals, |
|  |  | (III) that he or she surrenders any passport or travel document in his or her possession. |
|  |  | (*c*) If, at any time during the detention of a person pursuant to this section, an immigration officer or a member of the Garda Síochána is of opinion that none of the paragraphs of *subsection (8)* applies in relation to the person, he or she shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district where the person is being detained and if the judge is satisfied that none of the paragraphs of *subsection (8)* applies in relation to the person, the judge shall release the person. |
|  |  | (*d*) Where a person is released from a place of detention subject to one or more of the conditions referred to in *subsection (10) (b) (ii)*, a judge of the District Court assigned to the District Court district in which the person resides may, on the application of the person, an immigration officer or a member of the Garda Síochána, if he or she considers it appropriate to do so, vary (whether by the alteration, addition or revocation of a condition) a condition. |
|  |  | (11) *Subsections (4), (5), (8)* and *(10)* shall apply only to an applicant who, but for the provisions of this Act, would not be entitled to enter or remain in the State. |
|  |  | (12) (*a*) *Subsection (8)* shall not apply to a person who is under the age of 18 years. |
|  |  | (*b*) If and for so long as the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of *subsection (8)* shall apply as if he or she had attained the age of 18 years. |
|  |  | (*c*) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in *loco parentis* or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the health board for the area in which the person is being detained of the detention and of the circumstances thereof. |
|  |  | (13) (*a*) A member of the Garda Síochána may detain a person who, in the member's opinion, has failed to comply with a condition imposed by the District Court under *subsection (10)* in a place of detention. |
|  |  | (*b*) A person detained under *paragraph (a)* shall be brought as soon as practicable before a judge of the District Court assigned to the District Court district in which the person is being detained; and *subsection (10)* shall apply to such person detained under *paragraph (a)* as it applies to a person detained pursuant to *subsection (8)* with any necessary modifications. |
|  |  | (*c*) If a judge of the District Court is satisfied in relation to a person brought before him or her pursuant to *paragraph (b)* that the person has complied with the condition concerned, the judge shall order the release of the person. |
|  |  | (14) (*a*) Where a judge of the District Court commits a person to a place of detention under *subsection (10) (b)* or *(13) (b)*, a judge of the District Court assigned to the District Court district in which the person is being detained may, if satisfied that one or more of the paragraphs of *subsection (8)* applies in relation to the person, commit him or her for further periods (each period being a period not exceeding 10 days) pending the determination of the person's application under [*section 8*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0008.html#sec8) . |
|  |  | (*b*) If at any time during the detention of a person pursuant to this section the person indicates a desire to leave the State, he or she shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained and the judge shall, if he or she is satisfied that the person does not wish to proceed with his or her application for a declaration and wishes to leave the State, order the Minister to arrange for the removal of the person from the State and may include in the order such ancillary or consequential provisions as he or she may determine and the person concerned shall be deemed to have withdrawn his or her application for a declaration. |
|  |  | (15) A person referred to in *subsection (1)* shall not be given leave to enter the State under that subsection if— |
|  |  | (*a*) the person is the subject of an order under [section 5](http://www.irishstatutebook.ie/1935/en/act/pub/0014/sec0005.html#sec5) (1) of the [Aliens Act, 1935](http://www.irishstatutebook.ie/1935/en/act/pub/0014/index.html) , relating to particular aliens in force for the time being, prohibiting him or her from landing or entering into the State, and |
|  |  | (*b*) the order aforesaid is made, and is expressed to be made, because the Minister considers it necessary in the interest of national security or public policy (“ordre public”). |
|  |  | (16) Where, pursuant to *subsection (15)*, a person is not given leave to enter the State he or she shall not be entitled to make an application for a declaration without the consent of the Minister. |

**Section 10 – Provisions relating to detained persons**

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| **10.**—(1) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall, without delay, inform a person detained pursuant to *subsection (8)* or (*13*) (*a*) of [*section 9*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0009.html#sec9) or cause him or her to be informed, where possible in a language that the person understands— |
| (*a*) that he or she is being detained pursuant to [*section 9*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0009.html#sec9) , |
| (*b*) that he or she shall, as soon as practicable, be brought before a court which shall determine whether or not he or she should be committed to a place of detention or released pending consideration of that person's application for a declaration under [*section 8*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0008.html#sec8) , |
| (*c*) that he or she is entitled to consult a solicitor, |
| (*d*) that he or she is entitled to have notification of his or her detention, the place of detention concerned and every change of such place sent to the High Commissioner and to another person reasonably named by him or her, |
| (*e*) that he or she is entitled to leave the State in accordance with the provisions of this paragraph at any time during the period of his or her detention and if he or she indicates a desire to do so, he or she shall, as soon as practicable, be brought before a court and the court may make such orders as may be necessary for his or her removal from the State, and |
| (*f*) that he or she is entitled to the assistance of an interpreter for the purpose of consultation with a solicitor pursuant to *paragraph (c)* and for the purpose of any appearance before a court pursuant to [*section 9*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0009.html#sec9) . |
| (2) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall also explain to a person detained pursuant to *subsection (8)* or *(13) (a)* of [*section 9*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0009.html#sec9) , where possible in a language that the person understands, that, if he or she does not wish to exercise a right specified in *subsection (1)* immediately, he or she will not be precluded thereby from doing so later. |
| (3) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall notify the Commissioner and the Appeal Board of the detention or release of a person pursuant to the provisions of [*section 9*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0009.html#sec9) . |
| (4) The Commissioner or, as the case may be, the Appeal Board shall ensure that the application for a declaration of a person detained pursuant to *subsection (8)* or *(13) (a)* of [*section 9*](http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0009.html#sec9) shall be dealt with as soon as may be and, if necessary, before any other application for a declaration of a person not so detained. |

**APPENDIX 2 Additional Information in the Criminal Justice Context**

**Lawful detention of suspects**

There are a number of statutory provisions of relevance which provide for the detention of suspects prior to being charged. The principal ones are:

**Criminal Justice Act 1984**

Section 4 of the Criminal Justice Act 1984 provides for up to 24 hours detention (excluding rest periods) where the offence is an arrestable offence. An arrestable offence, as defined in the Criminal Law Act 1997 as amended, is an offence punishable by 5 years imprisonment or more and includes an attempt to commit any such offence.

The 24 hour maximum period of detention arises from an initial period of detention of up to 6 hours with the possibility of 2 extensions. The first extension of up to 6 hours duration must be authorised by an officer of Superintendent rank and the second extension, of up to 12 hours, must be authorised by a Chief Superintendent.

**Criminal Justice Act 2007**

Section 50 of the Criminal Justice Act 2007 permits detention of up to 7 days for a number of specified offences (including murder involving the use of a firearm, causing serious harm, false imprisonment, threats to kill or cause serious harm).

The first 48 hours is made up of a period of 6 hours followed by two possible extensions, the first up to 18 hours duration must be authorised by an Officer of Superintendent rank and the second of up to 24 hours, must be authorised by a Chief Superintendent.

Judicial authorisation is required to detain a person beyond this 48 hour period. An initial further period of up to 72 hours may be granted by the District or Circuit Court on application by a Chief Superintendent and a final extension of up to 48 hours may be granted by the District or Circuit Court again on application from a Chief Superintendent.

**Other legislation**

Similar provisions for detention of up to 7 days are also contained in the Offences against the State Act 1939 as amended and the Criminal Justice (Drug Trafficking) Act 1996.

**Extension to detention by Senior Garda Officers**

In all cases where a Senior Garda Officer is asked to authorise an extension of a period of detention he or she must satisfy themselves that there are reasonable grounds for believing that the extension is necessary for the proper investigation of the offence for which the person has been detained. Where the legitimacy of any extension of a period of detention is under question, the Senior Garda Officer involved will have to stand over their decision before the Courts.

All detention provisions demand the release of any person being detained if their further detention is no longer required for the proper investigation of an offence to which the detention relates.

**Court hearings relating to the extension of detention**

The Criminal Justice (Amendment) Act 2009 amended the powers under which suspects who are arrested in connection with the investigation of serious offences may be detained for the proper investigation of the offences concerned. The amendments deal in particular with court applications to extend the detention of such persons beyond 48 hours. These applications arise in the context of section 30 of the Offences against the State Act 1939 (which permits detention up to a maximum of 72 hours), section 2 of the Criminal Justice (Drug Trafficking) Act 1996 and section 50 of the Criminal Justice Act 2007 (which both permit detention up to a maximum of 7 days).

The amendments provide that in order to avoid prejudice to the investigation concerned, the judge may direct that:

(i) the hearing of the application may be held otherwise than in public (only the parties and their representatives are allowed to be present), or

(ii) the public should be excluded but that bona fide representatives of the Press, court staff and the parties and their representatives may remain.

It is also provided that, in respect of particular information, and on foot of an application by the Garda who made the application (in all cases, a superintendent or above) or on his/ her own motion, the judge may direct that in the public interest “the particular information should be given in the absence of every person” except the member or members of the Garda Síochána whose attendance is necessary to give the information (as well as such court clerks as the judge considers necessary). This provision applies where:

1. particular evidence is to be given by a Garda during the hearing (including cross – examination), that concerns steps taken or to be taken in the investigation of the arrested person’s or another person’s involvement in the offence concerned or any other offence, and
2. the nature of the evidence could prejudice in a material way the conduct of the investigation.

Having heard the evidence, the judge may direct that it be re-given in open court (but if certain parties had already been excluded from the hearing generally, they remain excluded) if he is satisfied that to re-give it in this way would not, in fact, prejudice the investigation.

The amendments also provide that where an application for an extension of the detention period is to be made, or is made, and the period of detention has not expired at the time the person who is the subject of the application arrives at the courthouse, but would expire before or during the hearing (including during any period of adjournment), the period shall be deemed not to expire until the final determination of the application.

**Criminal Justice (Drug Trafficking) Act 1996**

The Criminal Justice (Amendment) Act 2009 repealed section 11 of the 1996 Act which provided that certain sections of the 1996 Act ceased to be in operation unless renewed periodically by resolution of each House of the Oireachtas. The sections which required renewal included section 2 which permits detention of persons suspected of drug trafficking offences for up to 7 days. The effect of this amendment is that the relevant sections shall continue in operation without need for periodic renewal.