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*information for all*

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## Criminal Offences

There is a very wide range of behaviour which can be regarded as criminal in the sense that you may be charged with a criminal offence if you engage in it. Here we set out the main criminal offences which involve nuisance behaviour, public order offences and attacks on people and property. An attempt to commit an offence or aiding and abetting in the commission of an offence may also be a crime.

In criminal cases, the prosecution has to prove beyond reasonable doubt that the accused committed the offence. In many cases there is a detailed definition of the offence and each element of that definition has to be proven. The prosecution must also show that the alleged perpetrator had the necessary intent to commit the offence.

Here we describe the offences in reasonably simple terms – we do not give a comprehensive description.

There is a large quantity of legislation dealing with these offences – some of it dates from the 19th century. While most criminal offences are now statutory offences, some are still common law offences. This means that they are not described in Acts but have been developed and defined over the years by judges. The penalties for offences are set out in legislation.

The Criminal Justice Bill 2004 is going through the Oireachtas at present. It is expected that there will be a significant number of amendments – some of these may be concerned with public order offences.

### Investigating and Prosecuting Crimes

The Gardaí are mainly responsible for the investigation of crime. There are some other bodies who have a role but the offences which are described here are all investigated by Gardaí.

If you are arrested on suspicion of having committed an offence which carries a penalty of five years imprisonment or more, you may be detained for up to 12 hours. The Criminal Justice Bill 2004 proposes to allow for a further period of detention of 12 hours – that is, 24 hours in total.



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The Director of Public Prosecutions (DPP) is the person mainly responsible for prosecuting criminal offences. Major crimes are always prosecuted by the DPP. Generally, more minor crimes are prosecuted by the Gardaí. The DPP also decides what the precise charge is to be. For example, if a person dies as a result of violence, a suspect may be charged with murder, manslaughter, assault causing serious harm or some other lesser offence. The precise charge depends on the circumstances of each case. If you are charged with an offence, it is possible that you will be convicted of that offence or a lesser offence but it is not possible to be convicted of a more serious offence in these circumstances. If you are tried and acquitted, you may not be charged with that offence again even if new evidence becomes available – this is known as the principle of “double jeopardy” – you may not be put in jeopardy of conviction more than once in respect of the same occurrence.

## Types of Criminal Offences

The way in which a criminal offence is investigated and prosecuted depends on the type of crime involved. For these purposes, criminal offences may be described as

- ◆ Summary offences
- ◆ Minor offences
- ◆ Indictable offences
- ◆ Arrestable offences
- ◆ Fixed Charge Offences

There is no longer a legal distinction between a crime and a misdemeanour.

### Summary offences

The precise legal meaning of summary offence is quite complex. In general, summary offences are the less serious offences and they are tried in the District Court by a judge only. They include the majority of Road Traffic offences such as careless or drunken driving as well as minor thefts, assaults and public order offences.

In general, summary offences must be prosecuted within six months.

### Minor offences

A minor offence is one for which the penalty may be imprisonment for not more than twelve months and/or a fine of less than a certain amount (considered to be €3,000 at present). Minor offences are not necessarily the same as summary offences but there is considerable overlap. You are entitled to a trial by

jury for offences which are not minor (or which are being prosecuted in the Special Criminal Court).

### Indictable offences

These are the more serious offences which carry heavier penalties and must be tried in the Circuit Criminal Court or the Central Criminal Court by a judge and jury.

### Indictable offences tried summarily

Some offences may be tried summarily or on indictment and the law provides for different sentences depending on the method of prosecution. In certain cases, the District Court may deal with indictable offences where the accused pleads guilty.

### Arrestable offences

An arrestable offence is an offence for which a first offender may get a sentence of at least five years imprisonment.

### Arrest without warrant

Generally, you may be arrested without warrant for an arrestable offence. The Gardaí must have reasonable cause to believe that you were in the act of committing or have committed the offence. You may also be arrested without warrant for some lesser offences if there is specific statutory authority for this. There is such specific authority for many of the offences described here.

### Fixed charge offences

These are offences for which you may have to pay a fixed penalty instead of being prosecuted in the usual way. They currently exist in relation to speeding and parking, and litter offences. The Criminal Justice Bill 2004 which is currently before the Oireachtas proposes to introduce fixed charge offences in the public order area – see below.

## Penalties

Generally, the penalty for a criminal offence is a fine and/or a term of imprisonment. The decision on penalties is always made by the judge, even if the decision on guilt is made by a jury (except, of course, in the case of fixed charge offences).

**Mandatory sentences:** A mandatory sentence is one which must be imposed regardless of any other circumstances. In Ireland, there is only one crime which carries a mandatory sentence – murder. The sentence for murder is life imprisonment.

**Maximum and minimum sentences:** The law lays down maximum sentences for all crimes. For

example, the maximum sentence for rape is life imprisonment. There are minimum sentences in some cases. For example, there is a minimum sentence of 10 years for major drug trafficking but the judge may give a lesser sentence in exceptional and specific circumstances.

If the type of crime is one which may be tried summarily or on indictment, the maximum sentence differs in accordance with the trial method.

The judge has discretion to apply the full maximum sentence or any lesser sentence. When deciding what level of sentence to apply, the judge takes into account a number of factors. For example, pleading guilty, particularly in cases of rape or sexual assault, means that the maximum sentence may not be applied. While previous convictions may not be taken into account in the prosecution of the case, they can and sometimes must be taken into account in sentencing.

### Compensation orders

Compensation orders are provided for in the Criminal Justice Act 1993. In any case where the offence involves personal injury or loss of property, the court may make a compensation order instead of, or in addition to, any penalty. The court must take the means and the financial commitments of the convicted person into account when making a compensation order. Compensation orders may be

enforced in the normal way – this includes taking out orders for attachment of earnings.

### Sex Offenders orders

The Sex Offenders Act 2001 provides for the making of sex offenders orders. These are orders which prohibit convicted sex offenders from doing specific things mentioned in the order. Sex offenders may also be subject to post-release supervision.

### Adults and Children

The information given here relates to offences committed by adults. Children (aged under 18) may be charged and penalised in the way described but there are other considerations which must be taken into account. The prosecution of children is governed by the Children Act 2001 (not all of which is in effect) and by the earlier legislation on children – notably the Children Act 1908. In practice, children under the age of 12 are almost never prosecuted. It is the policy to avoid the prosecution of children under the age of 18 unless the conditions for the Garda Diversion Programme have not been met or the offence is a particularly serious one. The Children Act 2001 provides for a range of alternative penalties for children who have offended but not all of these are in effect. The implementation of the Children Act has been described in a number of issues of Relate, most recently in September 2004 and May 2004.

## Public Order Offences

The Criminal Justice (Public Order) Act 1994 is the main piece of legislation dealing with public order offences. It deals with behaviour in public places and provides for various controls to be exercised at public events. A public place includes roads, public parks or recreational areas, cemeteries, churchyards, trains, buses and other public transport vehicles.

In the case of most of the offences under this Act, if a Garda suspects you of being involved, you are obliged to give your name and address if asked. You may be arrested without warrant if you fail to give your name and address. You may be arrested without warrant if the Garda suspects you of having committed one of these offences.

The Criminal Justice (Public Order) Act 2003 provides that, if you are convicted of certain offences under the 1994 Act, you may be excluded from the premises for up to a year. This is in addition to the penalty under the 1994 Act.

### Being drunk – “Intoxication in public place” (Section 4)

In general, simply being drunk is not an offence. It is, of course, an offence to be drunk in various circumstances – notably while driving. It is an offence to be drunk in a public place if you are likely to endanger yourself or any other person in the vicinity. If a Garda suspects that you might be likely to commit such an offence he/she may take away any alcohol you have in your possession.

Summary offence; the maximum penalty is a fine of €127.

Under the Criminal Justice Bill 2004, it is proposed that this offence may be treated as a fixed charge offence – see below.

### **Offensive Conduct in public place (Section 5)**

It is an offence to engage in offensive conduct in a public place between 12 midnight and 7 am or at any other time if you are asked to stop by a Garda. Offensive conduct means any unreasonable behaviour which in the circumstances is likely to cause serious offence or annoyance to any person who is or might be aware of the conduct.

Summary offence; the maximum penalty is a fine of €635.

At present, there is no power to arrest without warrant for this offence or to require that you give your name and address to the Gardaí.

### **Fixed charge offences**

The Criminal Justice Bill 2004 proposes to introduce fixed charge offences in the public order area. (Fixed charge offences already exist in a number of areas, for example, speeding, parking and litter pollution offences.) The new Bill proposes to amend the Criminal Justice (Public Order) Act 1994 to allow charges under Sections 4 and 5 to be treated as fixed charge offences. This means that, instead of charging in the normal way, the Gardaí may serve notice on the suspect that he/she will not be charged if a stated amount is paid within 28 days. The amount of this fixed charge will be set by regulations.

In order to have the offence treated as a fixed charge offence, you must give your name and address to the Garda – failure to do so means you may be arrested without warrant and be convicted of a summary offence for which the maximum penalty is a fine of €1,500.

### **Threatening, abusive or insulting behaviour in public place**

It is an offence to use or engage in any threatening, abusive or insulting words or behaviour in a public place or to display any such words, signs, threatening or obscene displays etc. with the intention of provoking a breach of the peace or being reckless about provoking such a breach. Again, the Garda may confiscate alcohol.

Summary offence; the maximum penalty is a fine of €635 and/or 3 months imprisonment.

### **Failure to comply with direction of a Garda**

If you are in a public place and a Garda suspects that

you have been acting in a disorderly way or you were loitering in such a way that there was cause for concern about the safety of other people or property or about the maintenance of public peace the Garda may order you to stop or to leave the place. It is an offence not to comply with the Garda's orders.

Summary offence; the maximum penalty is a fine of €635 and/or 6 months imprisonment.

### **Wilful obstruction**

It is an offence if, without lawful authority or reasonable excuse, you wilfully prevent or interrupt the free passage of a person or vehicle in a public place.

Summary offence; the maximum penalty is a fine of €317.

### **Entering building with intent to commit an offence**

It is an offence to trespass with the intention of interfering with property.

Summary offence; the maximum penalty is €1,270 and/or 6 months imprisonment.

### **Trespass on building**

It is an offence to trespass in a manner likely to cause fear in another person.

Summary offence; the maximum penalty is €1,270 and/or 12 months imprisonment.

If a Garda suspects this offence is being committed, he/she may ask the person to leave. Failure to comply with the Garda's direction is an offence.

Summary offence; the maximum penalty is €635 and/or 6 months imprisonment.

### **Riot**

A riot in the legal sense may occur if there are 12 or more people together in any place and they use or threaten to use unlawful violence for a common purpose and their conduct is such as would cause a person of "reasonable firmness" present at that place to fear for their own or another person's safety.

Indictable offence; the maximum penalty is a fine (no limit) and/or 10 years imprisonment.

### **Violent Disorder**

This offence is similar to riot but may occur if there

are 3 or more people present. The maximum penalty is the same as for riot.

### **Affray.**

This offence may occur if there are 2 or more people present and threatening violence.

If tried summarily, the maximum penalty is €635 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 5 years imprisonment.

### **Demanding money with menaces**

It is an offence to make an unwarranted demand with menaces. This covers blackmail and extortion.

If tried summarily, the maximum penalty is €1,270 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 14 years imprisonment.

### **Assault with intent to cause bodily harm or commit indictable offence**

It is an offence to assault a person with intent to cause bodily harm or to commit an indictable offence.

If tried summarily the maximum penalty is €1,270 and/or 12 months imprisonment.

If tried on indictment, maximum penalty – a fine and/or 5 years imprisonment.

### **Assault or obstruction of peace officer**

It is an offence to assault a peace officer – this includes a Garda, Prison officer or member of the Defence Forces acting in the course of duty. The offence also covers an assault on a person assisting a peace officer.

If tried summarily the maximum penalty is €1,270 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 5 years imprisonment.

### **Failure to comply with Garda directions at public event**

The Gardaí have various powers to control the movement of people in the vicinity of public events. For example, they may erect crowd control barriers and order people to stay on one side of them or only allow them past if they are not carrying drinks or offensive articles. They also have powers to confiscate various objects at public events. They may search a person whom they suspect has intoxicating liquor or other items which might cause injury and may confiscate the offending items or refuse access to the person if he/she refuses to surrender the item. Failure to comply with Garda instructions in these cases is an offence.

Summary offence; the maximum penalty is €635.

### **Entering and occupying land**

New sections were put into the 1994 Act by the Housing (Miscellaneous) Provisions Act 2002. This provides that it is an offence for a person to enter or occupy land without the consent of the owner where there is a likelihood of damaging the land or affecting any amenity associated with the land. Gardaí have various powers to arrest without warrant, to order people to leave and to confiscate objects on the land. It is an offence to fail to co-operate with the Gardaí.

Summary offence; the maximum penalty is €3,000 and/or a month's imprisonment.

## **Criminal Offences against People**

### **Homicide**

If a person is unlawfully killed, the offence may be murder or manslaughter. If a person dies after a violent incident, the suspect may be charged with murder or manslaughter or with assault – the precise charge depends on the facts of the case and the evidence available.

Murder is a common law indictable offence. The statutory penalty is life imprisonment. This is a mandatory penalty.

Manslaughter is also an indictable offence. The maximum penalty is life imprisonment.

### **The Non-Fatal Offences Against the Person Act 1997**

This Act deals with offences against a person which do not result in that person's death.

#### **Assault**

What is sometimes called "common assault" is a summary offence; the maximum penalty is a fine of €1,905 and/or 6 months imprisonment.

It should be noted that the victim is not necessarily actually hit; being put in fear of being hit can constitute an assault. The victim need not be hurt.

**Assault causing harm**

In the case of this offence, actual harm must be caused.

If prosecuted summarily, the maximum penalty is

€1,905 and/or 12 months imprisonment

If prosecuted on indictment, the maximum penalty is a fine (no limit) and/or 5 years imprisonment.

**Assault causing serious harm**

This offence may be committed if a person intentionally or recklessly causes serious harm.

“Serious harm” means injury which creates a substantial risk of death or which causes serious disfigurement or substantial loss or impairment.

Indictable offence; the maximum penalty is a fine and/or life imprisonment.

**Threats to kill or cause serious harm**

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment

If tried on indictment, the maximum penalty is a fine (no limit) and/or 10 years imprisonment.

**Syringe related offences**

Syringe attack: This offence includes actual attacks with a syringe, threats to injure a person with a syringe, spraying blood onto a person or threatening to do so with the intention of causing the victim to believe that he/she may become infected.

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 10 years imprisonment.

If actual injury results, the penalty may be life imprisonment.

**Coercion**

This offence may be committed if a person tries to compel you to do or not do something by using violence or intimidation towards you or your family or by damaging property

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 5 years imprisonment

**Harassment**

This offence may be committed if a person, without lawful excuse or authority, harasses you by persistently following, watching, pestering, besetting or communicating with you.

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 7 years imprisonment.

The court may order the guilty person to stay away from the victim. Failure to comply with such an order is also an offence (same penalties as above).

If the accused is not convicted of harassment, the court may still order him/her to stay away from the person complaining. Failure to comply with such an order could constitute contempt of court. Contempt of court may result in a person being imprisoned until the contempt is purged.

**Demands for payment of debt causing alarm**

Summary offence; the maximum penalty is €1,905.

**Poisoning**

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 3 years imprisonment.

**Endangerment**

This offence may occur if a person intentionally or recklessly engages in conduct which creates a substantial risk of death or serious harm to another.

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 7 years imprisonment.

**Endangering traffic**

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 7 years imprisonment.

**False imprisonment**

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is life imprisonment.

**Abduction of child**

It is an offence for a parent, guardian or a person who has custody of a child to abduct a child (i.e. take the child - aged under 16 - outside the state or organise for the child to be taken outside the State) in defiance of a court order or without the consent of other people who have custody rights.

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is a fine and/or 7 years imprisonment.

It is also an offence for any other person to take or detain a child aged under 16 in order to remove the child from the control of the person entitled to that control.

The penalties are the same as above.

### Justifiable use of force

If you are attacked or your property is under threat, you are entitled to use a certain amount of force to defend yourself and your property. However, the precise limits are not very clear. The Non-Fatal Offences Against the Person Act 1997 provides that the use of reasonable force for the following purposes is not an offence:

- ◆ to protect yourself or another person from injury, assault or detention caused by a criminal act or
- ◆ to protect yourself or another (with the authority of the other person) from trespass to the person or
- ◆ to protect your property or that of another person (with the person's authority) from appropriation, destruction or damage caused by a criminal act or from trespass or infringement; or
- ◆ to prevent crime or a breach of the peace.

What exactly constitutes reasonable force and what circumstances give rise to the right to use such force are dependent on the precise facts of the case.

### Sexual offences

The Criminal Law (Rape) (Amendment) Act 1990 sets out the penalties for the main sexual offences. The Criminal Law (Sexual Offences) Act 1993 deals with offences such as buggery of a person aged under 17, gross indecency with males aged under 17 and sexual activity with a mentally impaired person. The Criminal Law (Amendment)

Act 1935 deals with offences such as statutory rape (sexual intercourse with a girl aged under 17)

### Rape

Indictable offence; the maximum penalty is life imprisonment.

### Sexual assault

This is sometimes known as indecent assault.

Indictable offence; the maximum penalty is 14 years imprisonment if the victim is aged under 17 and 10 years imprisonment in other cases.

### Aggravated sexual assault

This means a sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted.

Indictable offence; the maximum penalty is life imprisonment.

### Child trafficking

The Child Trafficking and Pornography Act 1998 deals with the following offences

#### Child trafficking and taking a child for sexual exploitation

Indictable offence; the maximum penalty is 14 years imprisonment.

#### Allowing child to be used for child pornography

Indictable offence; the maximum penalty is €31,743 and/or 14 years imprisonment.

#### Producing or distributing child pornography

If tried summarily, the maximum penalty is €1,905 and/or 12 months imprisonment.

If tried on indictment, the maximum penalty is 14 years imprisonment.

## Offences against Property

The main offences against property are dealt with under the Criminal Justice (Theft and Fraud Offences) Act 2001 but there is also a range of offences under the Criminal Damage Acts.

### Criminal Justice (Theft and Fraud Offences) Act 2001

This Act covers a range of theft and fraud offences including moneylaundering and forgery. The following are the main offences covered by it:

#### Theft

The crime of theft occurs if a person dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it. (This statutory offence replaced the common law offences of larceny, embezzlement and fraudulent conversion.)

Indictable offence; the maximum penalty is a fine and/or 10 years imprisonment.

### **Robbery**

You may commit robbery if you steal and, immediately before or while doing so, use force on another person or put another person in fear of being subjected to force. Indictable offence; the maximum penalty is life imprisonment.

### **Making gain or causing loss by deception**

You may commit this offence if you, by deception, induce another person to do or refrain from doing an act with the intention of making a gain for yourself or another or of causing loss to another.

Indictable offence; the maximum penalty is a fine and/or 5 years imprisonment.

### **Obtaining services by deception**

It is an offence to obtain services by deception.

Indictable offence; the maximum penalty is a fine and/or 5 years imprisonment.

### **Making off without payment**

It is an offence to make off without paying for goods or services when you know that you must pay on the spot.

Indictable offence; the maximum penalty is €3,809 and/or 2 years imprisonment.

### **Burglary**

The offence of burglary involves a person entering a building as a trespasser with the intention of committing an arrestable offence or, having entered the building, actually committing an arrestable offence.

Indictable offence; maximum penalty is fine and/or 14 years imprisonment

Aggravated burglary is burglary committed when the burglar has a firearm, imitation firearm or other offensive weapon.

Indictable offence; the maximum penalty is life imprisonment.

### **Possession of articles with intent to commit a crime**

It is an offence to be in possession of an article outside your home with the intention of committing a crime such as theft, burglary, obtaining something by deception, blackmail, extortion, demanding money with menaces or taking a vehicle without lawful authority.

Indictable offence; the maximum penalty is a fine and/or five years imprisonment.

The court may also order that the article in question be forfeited.

### **Handling or possessing stolen property**

It is an offence to handle stolen property or have stolen property in your possession. Handling means receiving or arranging to receive the property or helping to retain, dispose of or realize for the benefit of another person. You may be convicted of either handling or possessing stolen property if you either knew that the property was stolen or you were reckless as to whether or not it was stolen.

Handling stolen property is an indictable offence; the maximum penalty is a fine and/or 10 years imprisonment. Possession is also an indictable offence; the maximum penalty is 5 years imprisonment. However, in both cases, the fine and term of imprisonment may not be greater than that applied to the person who actually stole the goods.

If a Garda suspects that you have committed one of these offences, you may be asked to account for how you have the property. Failure to give such an account is itself an offence.

Summary offence; the maximum penalty is €1,904 and/or one year's imprisonment.

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