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# Your Rights as an Irish Citizen

Irish Association of Civil Liberty

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# *Your Rights as an Irish Citizen*

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# INTRODUCTION

The aim of this booklet is to provide the public with a guide to the rights of the citizen in our community. It is concerned only with the rights of citizens as against the State and public authorities, and not with the rights of citizens as between themselves—for example as between employers and employees, or landlords and tenants. Although written by lawyers, it does not purport to be a legal text book or a substitute for the professional advice which should be taken in all cases of difficulty; if you are in doubt as to your legal position, you should go to a solicitor. Nor does the booklet seek to obscure the fact that the citizen has obligations as well as rights, the principal one being to obey the law. The Irish Association of Civil Liberty, since its foundation in 1947, has always emphasised this fact. But we are aware that many citizens are in doubt as to the extent of their rights under the law, and that there is a demand for guidance on the subject.

We are conscious also of the fact that there is an increasing tendency on the part of the State and Local Government bodies to overlook the rights of citizens for the sake of administrative or political convenience, and for officialdom to regard the individual as a nuisance. This is an abuse of power, and the Irish Association of Civil Liberty has a long record of fighting it. Abuse of power can only succeed if the citizen lacks knowledge of his rights. This booklet will have succeeded in its aim if it helps to provide some of that knowledge.

# 1. THE CONSTITUTION AND THE RIGHTS IT CONFERS

The Constitution is the fundamental law of the country. The three organs of State—the Oireachtas, the Executive and the Courts—can only act lawfully within the limits which it lays down.

In particular, the Constitution defines certain rights—called "Fundamental Rights"—to which every citizen is entitled. Neither the Oireachtas by the legislation it enacts, nor the Executive by any of its actions, nor the Courts by their decisions are entitled to remove or curtail these rights in any way.

Under the Third Amendment to the Constitution, passed by referendum in May 1972, laws may be enacted which are "necessitated" by the obligations of membership of the **European Economic Community** and associated bodies; and laws and regulations of the Community's institutions may have the force of law here. So far there is no reason to believe that this will have any effect on civil liberties in Ireland, and some decisions of the courts of countries which are already members of the E.E.C. indicate that fundamental constitutional guarantees cannot be affected by Community laws.

The fundamental rights of the citizen are divided into five categories: personal rights, and rights in relation to the family, education, private property and religion.

### (a) Personal Rights

Article 40 begins by declaring the **equality of all citizens before the law.** There follows a solemn guarantee by the State to defend and vindicate the personal rights of the citizen and by its laws to "protect as best it may from unjust attack, and in the case of injustice done, vindicate the life, person, good name and property rights of every citizen".

The first and most important of the personal rights dealt with in Article 40 is that of **personal liberty**. The article expressly provides that no citizen may be deprived of his personal liberty save in accordance with law. To ensure that this right of personal liberty is recognised by all the organs of State, there is enshrined in Article 40 the right of any citizen deprived of his personal liberty for whatever reason to apply to the High Court for an Order of *habaes corpus*, i.e. an Order directing the person having custody of the citizen to produce him before the Court and to certify in writing the grounds of his detention—see *Section* 6 (f): **Arrest**; **Remedies.** The Article next recognises the inviolability of the dwelling of every citizen and prohibits any forcible entry, save in accordance with law—see *Section* 8: **The Rights of the Householder.**

The Article dealing with personal rights also guarantees the rights of citizens to:

(a) Freedom of expression,
(b) Freedom of assembly, and
(c) Freedom of association.

Each of these rights however can only be exercised "subject to public order and morality"; and each of them is further qualified in certain important respects.

So far as **freedom of expression** is concerned, while the citizens are entitled to express freely their opinions and convictions, the State is charged with the duty of ensuring that organs of public opinion shall not be used to undermine "public order or morality or the authority of the State". The right to criticise Government policy is however expressly sanctioned. The article also authorises the State to punish in accordance with law the publication of "blasphemous, seditious or indecent matter".

**Freedom of assembly** is guaranteed, provided the right is exercised peaceably and without arms. The State is entitled, however, to legislate for the prevention or control of meetings which are calculated to cause a breach of the peace or to be a danger or nuisance to the general public, and legislation is also permissible which prevents or controls meetings in the vicinity of either house of the Oireachtas. Such legislation cannot however contain any political, religious or class discrimination.

The rights of the citizens to form **Associations** and Unions is guaranteed, but its exercise "may be regulated and controlled in the public interest". Such legislation, again, cannot contain any political, religious or class discrimination.

**(b) Other Fundamental Rights**

Article 41 recognises the **Family** as "the natural primary and fundamental unit group of Society", possessing rights "antecedent and superior to all positive law", and guarantees it "in its constitution and authority". No law can be enacted providing for a dissolution of marriage. This means that, while the courts can grant judicial separations and can also declare a marriage to have been invalid and void from the beginning, they cannot grant a divorce or dissolution of a valid marriage which would enable either party to marry again.

Article 42 requires the State to provide free primary **education** for all children, and to see that every child receives "a certain minimum education, moral, intellectual and social". But it recognises the inalienable right of parents to provide this education themselves in their own homes or in private schools, and prohibits the State from obliging parents "in violation of their



conscience and lawful preference" to send their children to State schools or any particular type of school designated by the State.

By Article 43 the State acknowledges a natural right to **private ownership** of goods, and guarantees to pass no law attempting to abolish this right or the general right to transfer, bequeath and inherit property. These rights may however be "regulated by the principles of social justice", and limited by law for that purpose. The Succession Act, 1965, limits the right to bequeath property by providing that the husband or wife of a deceased person must receive a certain share in his or her estate, and that the children may apply to the courts to be allowed a share in the estate if the deceased has not provided for them fairly.

Finally, the Constitution recognises fundamental rights in relation to **Religion.** Article 44 recognises the special position of the Roman Catholic Church "as the guardian of the Faith professed by the great majority of the citizens", and also recognises certain other named denominations, and the other denominations in existence when the Constitution came into operation (December 1937). Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen. The State is forbidden to discriminate between citizens on the ground of religion and, when granting State aid to schools, to discriminate between schools on the ground of religion. The property of a religious denomination or educational institution cannot be taken from it "save for necessary works of public utility and on payment of compensation".

While the Constitution guarantees the freedom of every citizen to exercise these rights, it should be remembered that it also lays down that "fidelity to the Nation and loyalty to the State are fundamental political duties of all citizens".

# 2. FREEDOM OF EXPRESSION

**(a) General**

Article 40.6 of the Constitution is as follows:

> "The State guarantees liberty for the exercise . . . subject to public order and morality, (of) the right of the citizens to express freely their convictions and opinions."

The article goes on to say that:

> "The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their right to liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.
>
> The publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with law."

It will be seen that, while freedom of expression is one of the fundamental rights of the citizen guaranteed by the Constitution, the State is required to preserve "public order or morality or the authority of the State", and is authorised to suppress what is called "blasphemous, seditious or indecent matter". The State has availed of the opportunity thus given to curtail the right of freedom of expression in some important respects, referred to below.

**(b) Public Order and the Courts**

The Offences against the State Act, 1939, contains important restrictions on the right of freedom of expression. For example, Section 10 of the Act makes it an offence to print, publish, send through the post, distribute, or offer for sale any incriminating, treasonable or seditious document—see also *Section* 7: **Political Offences.**

The Act also makes unlawful the publication in any newspaper or periodical of material from or purporting to be from an unlawful organisation, and also requires the printing on every document printed for reward (except for certain specified documents) of the name and address of the person for whom or on whose instructions the document was printed.

**Television and Radio broadcasts** are subject to the provisions of the Broadcasting Authority Act, 1960, under which Radio Telefis Eireann is obliged to present information, news or features relating to matters of public controversy or the subject of public current debate objectively and impartially and without any expression of the Authority's own views. The Minister for Posts and



Telegraphs may however forbid the Authority to broadcast "any particular matter or matter of any particular class", and the Authority must comply. So far one such direction has been given, relating to illegal organisations.

Under the **Forcible Entry Act, 1971,** to "encourage or advocate" the commission of an offence under the Act, or even to be a member of a group which encourages or advocates such an offence, is itself an offence—see *Section* 9: **The Forcible Entry Act.**

There are also limitations on the rights of the press to comment on proceedings in the Courts—see *Section* 11: **Contempt of Court.**

**(c) Public Morality**

Blasphemy is a criminal offence and its punishment as such is expressly sanctioned by the Constitution. There have however been no prosecutions for blasphemy in this century.

The State has availed of its right under the Constitution to prevent the publication of "indecent matter" by laws providing for the censorship of publications and of films. There is no censorship of stage productions, which are however subject to the ordinary common law so far as the staging of obscene performances is concerned, although only one prosecution at Common Law of a theatrical performance has been brought in modern times in Ireland, and it was unsuccessful.

It is also prohibited (by the Criminal Law Amendment Act, 1935) to sell, advertise or import for sale any **contraceptive.**

**Censorship of publications** was established by Acts of 1929, 1946 and 1967, which establish a Censorship of Publications Board of five persons, appointed by the Minister for Justice, who are entitled to prohibit the sale and distribution of any *books* which, in their opinion, are indecent or obscene or which advocate the unnatural prevention of conception or the procurement of abortion. They are required to examine any book referred to them by a Customs Officer and any book in respect of which a complaint is made to them by any person. They must take into account, in examining a book, the literary, artistic, scientific or historic merit or importance, and the general tenor, of the book, the language in which it is written, the nature and extent of the circulation which, in their opinion, it is likely to have, the class of reader which, in their opinion, may reasonably be expected to read it, and any other matter relating to the book which appears to them to be relevant. An appeal can be brought from an Order of this Board to an Appeal Board, also of five persons.

The Censorship Board is also entitled to make Prohibition Orders in respect of *periodicals* which have usually or frequently

been indecent or obscene, which advocate the unnatural prevention of conception or the procurement of abortion, or which have devoted an unduly large proportion of space to the publication of matter relating to crime.

Any Prohibition Order made by the Board automatically ceases to have effect after a period of twelve years.

It is also an offence under the Acts to publish, in relation to any judicial proceedings, any matter the publication of which would be calculated to injure public morals, except in certain special cases, such as where the matter is printed in a "publication of a technical character bona fide intended for circulation among members of the legal profession or medical profession".

**Censorship of films** is established by Acts of 1923, 1925 and 1930, under which no film may be shown in public unless the Film Censor has granted a certificate that it is fit for showing. If the censor refuses his certificate, any person affected may appeal to an Appeal Board, which may affirm, reverse or vary the censor's decision. The censor may issue a certificate in respect of a film, parts of which he thinks unfit for public exhibition, where the owner of the film consents to the cutting of those parts. The censor may also issue a "limited certificate" permitting the film to be shown in special places or to special audiences (e.g. persons over a particular age) or under other special conditions.

The film censor may only refuse a certificate if he is of the opinion that the film is "indecent, obscene or blasphemous, or because the exhibition thereof in public would tend to inculcate principles contrary to public morality or would be otherwise subversive of public morality".

The censor's certificate is not required unless the film is being shown in public. Accordingly, private societies and clubs who confine admission to their members are not obliged to obtain a certificate in respect of the films shown by them.



# 3. FREEDOM OF ASSEMBLY

### (a) The right to hold meetings and processions in public

This right, guaranteed by the Constitution, is limited in its exercise by Common Law and by Statute. Your meeting, by its mere physical existence and irrespective of its nature or purpose, may be unlawful if you infringe property rights by trespass or if you hold your meeting in such a manner or at such a place and time that you are committing a private or public nuisance. For example, you must not trample on people's gardens or damage their premises, or obstruct them from passing along the highway. Also you may be forbidden by a Statute or Bye-Law from holding your meeting in certain places—for example, in the vicinity of Leinster House or under the Bye-Laws of a park such as St. Stephen's Green.

You may also be guilty of *unlawful assembly* if three or more of you meet together to support each other, even against opposition, in carrying out a purpose which is likely to involve violence or to produce in the minds of the people around you any reasonable apprehensions of violence, even though you ultimately depart without doing anything towards carrying out your design. Your unlawful assembly develops into a "*rout*" as soon as you do any act towards carrying out the illegal purpose which has made your assembly unlawful, and your "rout" becomes a "*riot*" as soon as the illegal purpose is put into effect forcibly by persons mutually intending to resist any opposition.

Certain statutes control the exercise of the right of assembly. The Offences against the State Act, 1939 forbids unauthorised military training and exercises, or the holding of a public meeting in connection with an unlawful organisation. (See *Section* 7: **Political Offences**). A Chief Superintendent of the Garda Siochana may prohibit such a meeting, but you may challenge such a prohibition by applying to the High Court. You may not hold a public meeting or a procession within half a mile of a place where either House of the Oireachtas is sitting or about to sit, if a Chief Superintendent has forbidden you to do so, or a Garda calls on the gathering to disperse.

Apart from the above, you are entitled to hold a public meeting or procession in a public place—including the street—at any time, without anyone's permission, although it is usually a wise precaution to inform the Gardai of your intentions in advance, to enable them to make any necessary arrangements.

### (b) Garda and Military Intervention

The Gardai are under a duty to disperse an unlawful assembly. They may also restrain or disperse a meeting which is itself lawful but which nevertheless seems likely to be the occasion of a breach

of the peace by others. The Gardai and Military in dealing with assemblies may only use the degree of force appropriate to the circumstances of the case, and necessary for the restoration of order. Firearms may only be used as a last resort, and in the gravest circumstances.

**(c) Private Meetings**

You are entitled to arrange and hold a private meeting, but it will be subject to the same Common Law and statutory controls as a public meeting. If you hold a private meeting, then you are entitled to exclude uninvited persons from it.

**(d) Conduct of Meetings**

Responsibility for the conduct of a meeting rests upon the chairman, who controls the speakers and maintains order. If the behaviour of a person is such that the meeting is interfered with and the offender persists in being obstructive, then he should be asked to leave, and if he refuses to do so he may be expelled with reasonable force. A person who acts in a disorderly manner for the purpose of preventing the transaction of the business of a lawful public meeting commits an offence under the Public Meetings Act, 1908. At a *public* meeting, where a person has a right to be present, one can only eject the perpetrator of gross disorderly conduct. At a *private* meeting, where a person is present by invitation, the offender must leave if requested to do so, and on refusal becomes a trespasser, and reasonable force may be used to expel him. Where a person has paid for admission, as to a place of amusement, he has the right to remain so long as he behaves himself and abides by the rules of the management; and if he is wrongfully ejected he can bring an action for breach of contract.

There is an important difference between a public meeting held in a public place, and a private meeting held on private premises or in a building hired by the organisers for the purposes of the meeting. A public meeting can be attended by anyone, but in the case of a private meeting, admission may be restricted to those invited by the organisers, who may also request unwanted persons to leave, and may have them removed if they refuse. If a public building is hired by any section of the public for the purpose of holding a private meeting, the building becomes a private place while the meeting is being held there.



# 4. FREEDOM OF ASSOCIATION

Article 40 Section 6 of the Constitution guarantees ("subject to public order and morality") the "right of the citizens to form associations and unions", but provides that laws may regulate and control the exercise of this right in the public interest. This is dealt with more fully in *Section* 5: **Trade Unions**, because the legal right to form associations most often arises in practice in connection with trade unions. But in addition to protecting trade unions, the Constitution's guarantee of freedom to form societies and associations extends to everyone.

The most important exercise by the Oireachtas of the power to "control" the exercise of the right is Part 3 of the **Offences against the State Act, 1939** (see *Section* 7—**Political Offences**). This provides that organisations are "unlawful" if (among other things) they seek to promote treason, or the alteration of the Constitution by violence, or to raise a military force without Constitutional authority, or to encourage the commission of crimes or non-payment of central or local taxes. If the Government thinks any particular organisation is "unlawful" it may make a "Suppression Order" in respect of it, and the organisation is then presumed to be unlawful. But anyone can then apply to the High Court to set aside a Suppression Order, and if the Court decides that the organisation is not "unlawful" it can make a "Declaration of Legality", and the Suppression Order will then have no effect, and the organisation will be a lawful one. The Government made a Suppression Order in respect of the I.R.A. in 1939, and it has never been revoked or challenged in Court.

It is an offence (punishable with a fine of up to £50 or imprisonment for up to two years') to be a member of an **unlawful organisation** (whether or not a Suppression Order has been made), unless the accused proves that he did not know the organisation was unlawful, or that he left it as soon as he found this out. The property of an organisation subject to a Suppression Order becomes the property of the Government; and if the Gardai think that premises are being used by such an organisation, they may close them down.

The right of association of some State servants is also restricted in other ways: Civil Servants, for example, may not join political parties, and members of the Defence Forces have to take an oath that they will not join political or secret societies or organisations. Gardai may not join organisations concerned with their pay or conditions, but must rely for such matters solely on their representative bodies.

Quite a severe inroad upon the right of free association has been made by the Prohibition of Forcible Entry and Occupation Act, 1971 (see *Section* 9: **The Forcible Entry Act**). This Act makes

it an offence not only to enter or occupy premises by force, but also to"encourage or advocate" anyone else to do so. And where a statement which does "encourage or advocate" this has been made by or on behalf of a group of people, every member of the group who consented to the making of the statement is also guilty of an offence. If you are prosecuted for this, and the prosecution produces evidence about such things as the rules of the group and the extent of your participation in its activities, the Court may hold that you consented to the making of the statement even though this cannot be directly proved.

Finally, under the **Electoral Act, 1963,** the Clerk of the Dail, as "Registrar of Political Parties" must prepare a list of political parties. There is no restriction on forming parties not registered by him, and no party need apply to him to be put on the Register, but only parties which are on the Register can have their name printed with the names of their candidates on ballot papers at elections.



# 5. TRADE UNIONS

### (a) The Right to Form Trade Unions

The Declaration (quoted in *Section* 4 above) in the Constitution guaranteeing the right to form associations and unions is the fundamental legal protection of the right to form new trade unions and of the right of existing unions to recruit new members. Even if the Oireachtas were to pass a law (as they did in 1941) infringing that right, the Courts have power to declare such a law unconstitutional, and, therefore, invalid.

However, the guaranteed right is hedged around by qualifications. Firstly, the right is "subject to public order and morality"; secondly the exercise of the right may be regulated by laws passed for its "regulation and control in the public interest".

The first qualification is no more than a recognition of the traditional law that no association formed for an obviously immoral or illegal purpose will be protected by the law, and a trade union would not be affected by this. There are, however, other statutes which do regulate and control the right to form associations and unions, and these are valid under the Constitution, which requires only that such laws contain no "political, religious or class discrimination". The most serious attempt to "regulate and control" the right to form Trade Unions was the Trade Union Act, 1941, part of which was challenged successfully in the Courts, where it was found to be unconstitutional. Among other things, the Act purported to give the exclusive right to organised workers of a particular class to a union whose members formed a majority of workers of that class. This was challenged (by the National Union of Railwaymen) on the grounds that these provisions did not merely regulate and control the right to form or join trade unions, but denied that right altogether. The Supreme Court held that this was so, and that the relevant part of the Act was therefore void. Thus under our constitutional law, which cannot be amended by statute, every worker has the right to join a trade union of his own choice.

The remainder of the 1941 Act was not affected by the Court's decision, and is therefore still valid in law. Among other things, it prohibits any trade union from negotiating wages and conditions of employment on behalf of its members unless it has obtained a Negotiating Licence from the Minister for Industry and Commerce. Such a licence cannot normally be obtained in less than eighteen months after the formation of the trade union.

### (b) The Right to Strike

The right to strike is nowhere expressly guaranteed by the Constitution, although any attempt by the State to compel strikers to return to work might perhaps be "forced labour" and thus infringe

the guarantee of personal liberty in Article 40, Section 4. But that guarantee is qualified by the phrase "save in accordance with law", and the Supreme Court has said that this means no more than that the State can infringe personal liberty only in pursuance of express legal powers conferred by the Oireachtas. There are not now any laws in force here which enable the Government to compel a return to work, or even a temporary "cooling-off" period, during a dispute.

**(c) The Right to Picket**

The right to picket means the right to attend at the employer's premises for the purpose of informing the public in a peaceable manner that there is a strike in progress, and persuading people not to work for the employer in question. This right is not guaranteed in the Constitution, but is recognised by the Trade Disputes Act, 1906, which has given rise to much litigation. A Trade Dispute is a dispute between employers and their employees, or between the employees themselves, which is connected in any way with their employment. The Act specifically permits anyone, either on his own behalf or on behalf of a trade union or other employees, to picket "in contemplation or furtherance of a trade dispute", at or near the place where the person picketed lives, carries on business or happens to be at any particular time.

A "trade dispute" is so widely defined in the Act that it was at one time thought that picketing might always be legal. But decisions of the Courts have restricted the right to picket as follows:

1. The picket must be **peaceful.** Any aggressive action or intimidation may be a ground for the Court granting an injunction against the picket, which would mean that if it continued, the picketers could be imprisoned for contempt of Court.

2. The dispute must **involve employees directly** in some way. A picket of employees to support one employer in a dispute against another employer would not be lawful.

3. The most important limitation on picketing in a dispute among employees themselves is that a claim by the members of a Union for a "**closed shop**"—an arrangement whereby all the employees at a particular place of employment must be members of one union—does not constitute a trade dispute, because it is an attempt to force the employees into joining a particular trade union, and thus an infringement of the freedom of association which is guaranteed to everyone by the Constitution.



4. Picketing is unlawful unless in furtherance of a trade dispute which is based on a **genuine and bona fide difference** with the other party. A trade union cannot secure the protection of the Act by setting up a spurious and artificial dispute, merely to justify the picket.

5. The picket must not consist of an **unreasonable number** of persons.

# 6. ARREST

## (a) Powers of Arrest

There are two types of arrest: arrest on foot of a warrant and arrest without warrant. A member of the **Garda Siochana** who shows you a valid **warrant** for your arrest (naming you and stating the offence charged) may arrest you. He may force an entrance into your house for this purpose.

He may arrest you **without warrant** if he has reasonable grounds for suspecting that you have committed a felony (e.g. stealing or housebreaking), or if you have committed a breach of the peace in his presence. Certain statutes (e.g. The Road Traffic Acts) also authorise arrest without warrant in certain circumstances. The Garda must actually tell you that he is arresting you, and he must tell you the reason. He may use such force as is reasonably necessary in arresting you. If the Garda is in plain clothes he must show you his identity card on request.

If you resist a lawful arrest you commit an offence. But you are entitled to resist an arrest that is not lawful. If you are in doubt as to the lawfulness of the arrest, you should not resist but should take careful note of the identity (by reference to name, number or appearance) of the Gardai concerned in your arrest. The law does not permit "temporary detention" or "taking you to the station for questioning". You are either under arrest or you are not. Although a Garda is entitled to invite you to come to the station, he cannot force you to come unless he arrests you. If you go voluntarily to the station, you are free in law to leave whenever you wish, and you cannot be prevented from doing so, unless you are then arrested.

A **civilian** may also arrest you if he has reasonable grounds for suspecting that you have committed a felony; and if you are committing a breach of the peace he may restrain you from doing so. Shop detectives or employees of security firms are in no different position from the ordinary civilian in this regard.

## (b) Questioning

The law does not in general compel you to make any statement to the Gardai or to answer questions, before or after arrest, except in the case of the Offences against the State Act, 1939 (see *Section* **7—Political Offences**), and under the Road Traffic Acts, where you commit an offence if you refuse to give any information you may have that may lead to the identification of the driver of a motor vehicle who has committed a traffic offence. The driver of a vehicle must on demand give his name and address to a Garda who informs him that he suspects that he has committed a specific



traffic offence, and if he refuses to do so he may be arrested without warrant. A cyclist must give his name and address to a Garda who suspects him of having committed a crime or of having been concerned in a traffic accident. A Garda is always entitled to ask you questions, and the law-abiding citizen will no doubt be anxious to co-operate voluntarily with the Gardai in the performance of their duties. But except in the above cases you are under no obligation in law to answer.

A child should not be questioned by the Gardai save in the presence of one or both of his parents.

## (c) Search

A Garda may search you on arrest if he has reasonable grounds for believing that you are carrying objects that may be the cause of harm to yourself or to others, or that may afford evidence of crime. He may take possession of such objects. He may not search you unless you are under arrest or consent to be searched.

A civilian may never search you without your consent.

Your private person may never be examined without your consent, either by the Gardai or by a Garda doctor. If you have been arrested for an offence involving alcohol (e.g. drunken driving) you may not be examined by a Garda doctor unless he first warns you that he is about to do so, that you are not obliged to submit to examination, and that the results may be given in evidence. You are entitled to be examined by your own doctor, sent for by the Gardai on your request, either in addition to or in substitution for the Garda doctor.

It is an offence for a *driver* to refuse to supply, on demand by a Garda, samples of breath and of either urine or blood.

There appears at present to be no legal obligation on the Gardai to permit you to contact your family or a solicitor on arrest.

## (d) Fingerprints and Photographs

The general rule is that your fingerprints may only be taken with your consent, except in the case of arrest under the Offences against the State Act, 1939, which entitles the Gardai to take your fingerprints and photograph.

## (e) Bail

After you have been arrested you cannot be held in custody indefinitely. The member of the Garda Siochana in charge of the Garda Station has power to release you on bail. If he does not do so, you must be brought at the first opportunity before a District Justice, or, if there is none available, before a Peace Commissioner.

The Peace Commissioner must remand you on bail or in custody to the first available sitting of the District Court. At that Court, if your case is not dealt with then and there, you may be remanded on bail or in custody to another sitting of the Court not more than eight days later, unless you consent to a longer period, in which case it must be not more than thirty days later if you are in custody.

If you are refused bail by a District Justice you always have the right to apply to the High Court for bail, and you will usually get it unless the Court believes that you are unlikely to turn up for your trial.

Bail may be your own bail or that of a bailsman. It is not necessary to produce the bail money in cash if you and the bailsman are creditworthy persons resident in the jurisdiction. If you fail to turn up for your trial your bailsman may have his bail forfeited by the Court, whether it has been lodged in cash or not.

**(f) Remedies**

If you are being unlawfully detained, an application may at short notice be made at any time to any Judge of the High Court for an Order of *habeas corpus* directing the Gardai (or whoever is detaining you) to justify your detention to the Court. This application may be made by anybody on your behalf. In default of legal justification the Court will order your immediate release.

Following your release, whether or not as a result of a *habeas corpus* application, you may institute a civil action for damages for false imprisonment and assault against those who wrongfully detained you, however briefly.



# 7. POLITICAL OFFENCES

**(a) Introductory**

If you are suspected of having committed a "political offence" you will find that your rights differ in certain respects from those you have under the ordinary criminal law, described elsewhere in this booklet. The most serious political offence is treason and it is defined by the Constitution itself. Basically, it consists of armed warfare against the State, or of attempting to overthrow the constitutional organs of Government by force. But no charge of treason has ever been brought in the lifetime of the present Constitution.

The political offences which have mattered in practice are less serious in character. They are governed by the Offences Against the State Acts, 1939 and 1940. Most of them involve the idea of "usurping the functions of Government"; for example, it is an offence to take part in a group of persons claiming to be the Government or Parliament of the country, which is not established under the Constitution. A document which makes such a claim is a "seditious document", possession of which is an offence.

Some Sections of the Offences Against the State Acts are part of the ordinary law which can be used at any time (even though in fact many of them have been very little used). Others can only be operated after the Government has issued a proclamation putting them into effect. But this can be done at very short notice, and without consulting the Oireachtas, and so the difference is not as great as one might think.

**(b) Questioning and Arrest**

Any Garda who suspects you of being concerned in committing an offence against the State, or of being about to commit one, can stop, search, interrogate, and arrest you without warrant. He must, however, be in uniform or produce his identification card to you if you ask for it. If you are travelling at the time in a vehicle or ship he can stop and search it, and he can use force if necessary to do this. If you are arrested, you can be detained for twenty-four hours from the time of arrest and you can be detained for a further twenty-four hours on the order of a Chief Superintendent (or of a Superintendent who has been given authority to do this by the Commissioner of the Gardai). But if you are not charged within twenty-four hours (or forty-eight hours as the case may be) you must be released.

While you are detained, after arrest, you can be asked your name and address, and if you refuse to give these particulars or give false ones you commit an offence. You may also be searched, photographed and fingerprinted, and if you try to resist you have also

committed an offence. If you escape you can be re-arrested without warrant and brought back; and anyone who helps you to escape or to avoid recapture has committed an offence.

If a Garda who has a Search Warrant to look for documents concerned with Offences against the State (see **Powers of Search** below) finds you in the house or other place he is searching he can ask you for your name and address. He does not need to suspect you of having committed or of being about to commit any offence in the circumstances. If you refuse these particulars or give false ones you commit an offence, and can be arrested immediately without warrant. But in all cases of arrest for political offences, as in others, the Supreme Court has said "The citizen has a right before acquiescing in his arrest to know why he is being arrested". In particular, if you are being arrested under an Internment Warrant (see **Internment** below) you must be told that such a warrant exists and that you are being arrested under it.

### (c) Powers of Search

If a Chief Superintendent of the Garda (or a Superintendent authorised by the Commissioner to act in this way) is satisfied that there is reasonable ground for believing that documents relating to Offences against the State are to be found in a building or other place, he can issue a Search Warrant. The warrant will authorise an Inspector (or more senior Garda Officer) to carry out a search. He can bring with him, not only any other members of the Gardai, but any other people actually named in the warrant to take part. If necessary, he can use force to get in; and he can seize any documents or things which he reasonably believes to be evidence of a political offence. If he does so, the documents may be kept indefinitely, but other documents seized, unless proceedings are begun, have to be returned after a month.

These powers of search are important, because possession of such documents may not merely be evidence to support another charge, but an offence in itself. A "seditious" document is, in general, one which relates to Offences against the State, short of treason. But there is also a kind of document known as "incriminating" which is one issued or apparently issued by an "unlawful organisation": see *Section* 4—**Freedom of Assembly**.

What of your position, then, if "seditious" or "incriminating" documents are found on your premises—perhaps in an out-house? The mere finding is enough evidence to convict you of an offence; there is no need for the prosecution to prove that you knew anything about the documents. But if *you* can prove that you knew nothing about it you will not be convicted. Furthermore if an "incriminating" document is found on your premises, that is enough evidence to convict you of being a member of an unlawful organisation.



In addition to the powers of search, there is the power of any Garda to ask you to surrender to him a seditious or incriminating document in your possession. If you refuse, you thereby commit an offence. There are also provisions about the publication of material appearing to come from an unlawful organisation—see *Section* 2(b)—**Freedom of Expression : Public Order and the Courts.**

### (d) Internment

This is the most marked difference between the law of political offences and the ordinary criminal law. The law of internment is brought into operation by Government Proclamation; it was last in force during the years 1957 to 1962. It is likely that if it were again invoked, this would be done very speedily and the first knowledge some persons might have would be their own arrest.

Once the Government issues the necessary proclamation, any Minister can issue a warrant ordering the arrest and detention without trial of any person who in his opinion is engaged in activities "prejudicial to the preservation of public peace and order or to the security of the State". (The power is not confined to the Minister for Justice.) The Minister must sign each warrant and seal it with his official seal and the existence of the warrant has to be made known to you if you are being arrested under it—but the warrant itself need not be produced to you at the time of arrest.

After your arrest under this warrant, and after you have been brought to a place of detention, you must be given a copy of the warrant. While detained you are subject to the powers of search, etc., mentioned above under **Questioning and Arrest** in this section. Detention is indefinite—no charge need be brought and the Government is not obliged to release you from internment after any given period of time. Your conditions of life under internment are a matter for regulation by the Government. Since regulations about this have to be made again each time internment is reintroduced, it is difficult to say much about them.

If you are interned, however, there is one means of release provided by law (apart from change of mind on the part of the Government). The Government is obliged by law to set up a Commission of three members, two of them lawyers, the other an Officer of the Defence Forces. If you wish, you can write to the Government asking for an enquiry whether you should remain interned. The Government must refer this to the Commission, and if the Commission decides that no reasonable grounds exist for keeping you in internment, the Government must then release you. But the Commission is not a court, and the principle which it has to follow is the reverse of the ordinary rule of criminal justice: it is not

enough that you can throw doubt on the reasons for your continuing internment; there must be no reasonable ground for it.

There may of course be political conditions laid down by the Government of the day which permit release without consideration of your case by the Commission at all—for example, any internee who undertakes not to engage in certain activities might be released. But these are matters of politics, not of legal rights.

**(e) Special Criminal Courts**

Like the law of internment, the law of Special Criminal Courts is brought into operation by Government Proclamation. It was last in force during the years 1961 to 1962. Though it is probable that you will only appear before such a Court if you have been charged with a political offence or an offence with an obviously "political" flavour, there is no limit to the scope of offences that may be dealt with by such a Court.

The Government may establish these Courts if it is satisfied that the ordinary Courts are inadequate to secure the administration of justice and the preservation of public order. The Government may also declare that all offences of a particular kind are to be dealt with in such Courts. But even if an offence is not such an offence, you may find, if you are charged with it at a time when Special Criminal Courts are in operation, that you are brought to a Special Criminal Court for trial, because the Attorney General has power, in effect, to compel such a transfer in individual cases.

While these Courts are operating several of the more familiar safeguards of our legal system may not be available to you. If you have been detained at such a time in the way described above under "Questioning and Arrest", any Garda may ask you for a full account of your movements and all information in your possession as to any offence committed or intended to be committed by someone else. If you refuse to give such information or give false information, you commit an offence, and may be sentenced to imprisonment for up to six months.

If you are tried by a Special Criminal Court you will find that you have no right to a jury, no matter how serious the charge against you. In addition the Court has very wide powers to conduct its procedure in ways that no ordinary Court may. What is more, instead of Judges trained in the law, your Judges may be, without exception, Army Officers, provided that they are not of rank lower than Commandant. (They may be ordinary Judges, Barristers or Solicitors, but you have no way of ensuring that they are.) On the other hand, if you are convicted, you may be able to appeal to the Court of Criminal Appeal (one of the ordinary Courts), provided



that either the Special Criminal Court or the Court of Criminal Appeal itself regards your case as a suitable one for appeal.

The Special Criminal Court must, however, not be confused with Special Military Tribunals which, under the Constitution, may be established in a state of war or armed rebellion. These amount to what would generally be called "Martial Law Courts".

# 8. THE RIGHTS OF THE HOUSEHOLDER

**(a) The right to search your premises**

Article 40. 5 of the Constitution provides that "the dwelling of every citizen is inviolable, and shall not be forcibly entered save in accordance with law." Accordingly, no one has the right to enter your premises to search for any person or thing except with your permission or with express legal authority. Generally there would be no legal authority to search your premises unless the searcher has a Search Warrant, but there are some exceptional cases where members of the Garda Siochana may enter and search **without warrant.** The most important of these cases are :

(1) A Garda may, if authorised in writing by a Superintendent, search any premises for **stolen property**; but only where the premises were within the preceding twelve months occupied by a person who was convicted of, for example, receiving stolen goods, or where the present occupier has been convicted of an offence of fraud or dishonesty.

(2) Where a Garda Superintendent or Government Inspector reasonably believes that an emergency situation, which endangers life, has arisen, he may give a written Order to a Garda, Government Inspector or officer of a Local Authority to search for **explosives.**

(3) Under the **Official Secrets Act, 1963,** where a Chief Superintendent reasonably believes that "in the interest of the State immediate action is necessary", he may order a member of the Garda Siochana not below the rank of Inspector to search any premises and seize any document or thing believed to be evidence of an offence under the Act.

(4) Under the **Offences against the State Act, 1939,** (see *Section* 7 : **Political Offences**) where a Garda Officer not below the rank of Chief Superintendent reasonably believes that documentary evidence relating to an offence under that Act is to be found in any premises, he may order an Officer not below the rank of Inspector to enter any such premises and seize any such documents.

In most other cases you would be entitled to refuse admission to any person demanding to be allowed to enter and search your premises, unless he produced a Search Warrant, which must be signed by a District Justice or Peace Commissioner. In most cases it can only be issued to a member of the Garda Siochana, but there are cases where it can be issued to some other public official.



If therefore any person demands to enter and search premises occupied by you, claiming to do so in exercise of legal authority, you should, before allowing him to do so, require to see his authority. This must either be a search warrant signed by a District Justice or Peace Commissioner, or (in the cases listed above) a signed Order. If he does produce it, you should make sure that it correctly describes the premises to be searched, the person who claims to be entitled to make the search by virtue of the warrant or order, and the nature of the offence which is suspected or the goods, documents, or persons who are to be searched for. If these particulars are not included in the warrant or order, or if the description of the premises, or of the person to make the search, is incorrect, you are entitled to refuse admission. But if the document is in order, the person named in it is entitled to enter and search your premises without your permission, and if you refuse to admit him for that purpose, he may use reasonable force.

**(b) The rights of public officials to enter your premises**

If any official seeks to enter your premises without your consent, you are always entitled to know by what authority he claims to do this, and to ensure that he acts strictly within its limits. Many statutes authorise District Justices to make orders empowering various public officials to enter private premises.

The only common law (apart from statute) right of entry by a public officer in times of peace is the right of a **sheriff** or his deputies to enter premises to execute the judgment of a court— that is, to seize the goods of a person against whom a court order for payment of money has been obtained. A sheriff has no authority to execute a decree until the judgment creditor has obtained it from the Court, and delivered it to the sheriff. The sheriff or his deputies may not break open the outer door of a dwellinghouse, but may enter if the door is open, or may open it by means (such as turning a key) which do not involve force. They may also enter through an open window, but may not open a window for the purpose. The prohibition on breaking open the outer door does not apply where the debtor has removed himself or his goods to premises not his own. If he does that, the sheriff may break into the stranger's house—even by breaking open the outer door—but only if the debtor or his goods are in fact there. If they are not there, the sheriff and his deputies are trespassers upon the stranger's premises, and can be ejected or sued for trespass. Once the sheriff or his deputy has gained entry, he can break open rooms, cupboards and trunks, even without first asking the debtor or occupier to open them, but he must not remain upon the premises for an unreasonable time, and if he does so he will become a trespasser.

A member of the Garda Siochana who has a **warrant to arrest** a person may, after demanding and being refused admission to the premises, break open doors and enter the premises to effect the arrest: see *Section* 6 (a)—**Arrest.**

There are very many **statutory provisions** authorising public officials to enter private premises in the course of their duty. It is not possible here to do more than refer to a few of the more important provisions, and the following list does not include premises, such as public houses or food shops, where particular trades or businesses involving official inspection are carried on.

(1) A **Local Authority,** by its servants, may enter private lands to do anything in connection with the construction of a bridge or tunnel, on giving twenty-one days' notice to the occupier; but the occupier may apply to the District Court to prohibit the entry, and the Court may do so, or permit it only upon conditions. The entry can only be between 9 a.m. and 6 p.m.

(2) A person authorised by a **Local Authority** may enter private land for any purpose connected with housing (including survey, valuation and examination) of the premises entered. If the consent of the occupier cannot be obtained, the Local Authority must serve fourteen days notice of intention of entering the premises, and the occupier may then apply to the District Court to prohibit the entry, or to impose conditions under which the entry is to be made.

(3) **The E.S.B.** and its employees may enter any land to do anything connected with the business of the E.S.B., and any person who obstructs such entry is guilty of an offence. Although the powers of entry listed above provide for application to the District Court as a safeguard, this provision has no such safeguard, and there is not even any requirement for giving notice to the occupier of the lands.

(4) **Fire Officers** may enter private premises to inspect them if they are potentially dangerous as a fire risk; and fire brigades while fighting fires can enter any premises and do anything there (including demolishing the premises) which is necessary for fighting the fire.

### (c) Telephone tapping and interference with the Mails

No one has the right to "tap" your telephone, or open your post, and it is an offence for any telephone or postal official or other person to do so, without authority. But it has long been the practice (although expressly authorised by Statute only in the case of the post and not telephones) for the Minister for Justice to sign warrants



authorising officials to tap the telephones, and open the post, of anyone named in the warrant. The Minister has refused to state in the Dail the number of warrants in force at any time, but has said that they are only signed when required for security purposes or for the prevention or detection of serious crime, information as to which could be got in no other way.

### (d) The Householder's rights against trespassers

Any occupier of premises—which includes a tenant but not a lodger or guest—can treat a person who enters the premises without authority or permission as a "trespasser". If a trespasser has entered your premises peaceably and without force you must first request him to leave, and allow him time to do so, but if he does not then do so you may use reasonable force to eject him. If he entered, or tried to enter, by force, you can use force to put him out without any prior request to leave. But you may never use violence which would be likely to injure the trespasser, even though nothing less would get him out; and you must never deliberately injure him—all you are entitled to do is to put him out, using the least force that is necessary for the purpose. Under the **Forcible Entry Act, 1971**—see *Section* 9—the trespass may also be a crime, in which case you will be entitled to the help of the Gardai in removing the trespasser. But whether or not this Act applies, you are also entitled to apply to the Courts for an Injunction ordering the trespasser to leave, and if he does not do so he can then be arrested and imprisoned for contempt of Court.

### (e) Seizure of Property

In general, no one has any right to take from you, without your permission, property which you own. An exception is the right of court officers under the Sheriff to take your goods in payment of a court judgment for debt—see Sub-Section (b) above. Also the Gardai may seize incriminating documents or property under the Offences against the State Act (See *Section* 7—**Political Offences),** or dangerous goods, such as explosives and firearms, which are held without authority.

There are other cases where people may come into your premises and seize and take away goods which are there, but which you do not own. If a search warrant for stolen goods is issued for your premises, the Gardai so authorised may take away any goods which they find in your house and believe to be stolen. But a more common case would be goods which you may have in your house on hire or hire purchase. Many written *hiring* agreements contain clauses authorising the hiring firm to enter the hirer's private house and take the goods back if there is some breach of the agreement. If you sign a hiring agreement with such a clause, the firm will be authorised

to come into your house—even by force if necessary—and take back the goods. But under the Hire Purchase Acts, a *hire purchase* agreement may not contain any clause authorising the hire purchase company to enter your premises to take back any goods, except a motor vehicle, and even then not if it is at your dwellinghouse. And once you have paid one-third of the hire-purchase price, a hire purchase company can never take back any goods, whether from your premises or anywhere else, without a court order.



# 9. THE PROHIBITION OF FORCIBLE ENTRY AND OCCUPATION ACT, 1971

Under this Act you will be committing an offence if, by using force, you enter any premises (including lands, buildings, or vehicles) which do not belong to you, unless your entry does not interfere with the owner's use of the premises, and you leave them quickly and peaceably on being asked to do so by the owner or a Garda in uniform.

You will also be committing an offence under the Act, if, whether or not your original entry was by force, you remain in "forcible occupation" of any premises. This includes doing anything while you are in them to prevent or obstruct anyone else from entering them lawfully.

It is not an offence to do any of these things if you honestly believe that you have a genuine legal (but not merely moral) claim to the premises, and in a prosecution under the Act, if (but only if) you show that you do believe this, you cannot be convicted unless it is proved that you are not the legal owner.

If the owner of the premises or the Gardai have to do damage to the premises in order to remove you from them, the Court may, when passing sentence, take into account whether or not you have compensated the owner for that damage (as well, presumably, as any damage you may have done yourself). A Garda may arrest you without warrant for an offence under the Act if he believes you are committing it and are causing damage to the premises, interference with the owner's rights, or inconvenience to the public, which only your arrest can prevent, and it is not practicable for him to apply for a warrant. The Act also creates the offence of "advocating or encouraging" offences under it, or of being a member of an organisation which does so, and these are dealt with in *Section* 4—**Freedom of Association.**

The maximum penalties under the Act are a £100 fine and twelve months imprisonment (£50 and six months for a first offence) on summary conviction, or £500 and three years on conviction by a **jury.**

# 10. THE MENTAL TREATMENT ACTS

The Mental Treatment Acts contain a number of provisions affecting the civil rights and liberties of people who are or are alleged to be of unsound mind. The principal Acts dealing with this are the Mental Treatment Acts of 1945 and 1961. The main provisions of all the Mental Treatment Acts are summarised in a booklet on the subject published by the Government Publications Office, Dublin. What follows is a summary of the most important provisions affecting the citizen's civil rights.

### (a) Admission of Patients

Mental hospitals can be either Public Mental Hospitals, maintained by the health authorities, or Private Mental Institutions. A person can be compulsorily admitted to and detained in a **Public Mental Hospital** if a registered medical practitioner makes a recommendation for that purpose to the Health Authority in charge of the hospital, and if the medical officer in charge of the hospital then makes a "Reception Order" in respect of the person so recommended. The practitioner who makes the recommendation must not be the person in charge of the hospital, nor a relation of the person to be admitted. The practitioner's recommendation must include a "Certificate" that the person in question is a "person of unsound mind" and "a proper person to be taken charge of and detained under care and treatment", and is unlikely to recover within six months. Once a Reception Order has been made, the Health Authority can detain the person in a mental hospital until his recovery, and a Garda can take custody of the person and remove him to a mental hospital. But if seven days elapse after the recommendation is made without the person being brought to a mental hospital, the recommendation lapses, and a Reception Order cannot be made upon it.

There are similar provisions for the compulsory admission and detention of persons of unsound mind in **Private Mental Hospitals,** but in that case the Reception Order and Certificate that the person is of unsound mind must be given by two registered medical practitioners, who must each examine the patient separately. The order can only be made within seven days of the date on which it is applied for, and neither of the practitioners making it can be a relation of the patient, nor a person in charge of or having any connection with the institution into which the patient is to be admitted.

A **Garda**, if he thinks that a person believed to be of unsound mind should, for the public safety or his own safety, be taken into



custody, may arrest and detain him in a Garda Station. As soon as possible after bringing the patient to the Station however, the Garda must apply to a registered medical practitioner for a recommendation that the patient be brought to a Mental Hospital.

Although the person in charge of a Mental Hospital cannot make recommendations for the admission of long term patients into the Hospital, he can make orders for the **temporary compulsory reception** of patients, for not longer than six months. This period can be extended by the Minister for Health up to eighteen months. The persons in charge of Public Mental Hospitals and of Private Mental Institutions both have this power of admitting temporary compulsory patients.

**Applications** for recommendations for Reception Orders, whether temporary or permanent, can only be made by certain categories of people set out in the Acts. Generally speaking, people who can make the application are the relations of the patient, the Local Assistance Officer (if requested to do so by a relation), or a Garda, if he has taken a patient into custody. If any other person makes the application, he must give an explanation why it has not been made by someone in one of the above categories. The applicant must always be over twenty one years old, and must have seen the patient within fourteen days of making the application.

A person may also be admitted to a Mental Hospital as a **voluntary patient**—that is, on his own application, or if he or she is under sixteen years old, on the application of a parent or guardian. The only restraint which can be placed on a voluntary patient is that he can be required to give seventy two hours notice of intention of leaving the hospital. Once seventy two hours have elapsed after the patient has given notice of his intention of leaving, he cannot be further detained, unless of course an order for his compulsory detention has been made in the meanwhile.

### (b) Rights of Patients and their Relatives

Any person of unsound mind who is detained in a mental hospital must be **released** as soon as he recovers, and a patient can at any time apply to the Minister for Health to appoint two registered medical practitioners to examine him and report on whether he should be released. On receiving their report the Minister can "if he so thinks fit" order the patient's release.

Any person who wishes to have **information** as to whether a particular patient is detained in a mental hospital, and if so the whereabouts of the hospital, and the names of the registered medical practitioners who recommended or ordered his detention, may apply for that information to the Mental Hospital Authority. The Authority must then either supply the information or inform the

applicant that it will not do so because it does not think that the applicant is "a proper person to be given the information for which he applies". If the Authority refuses information on this ground, the applicant can appeal to the Minister for Health who may, if he thinks fit, order the Hospital Authority to supply the information. Particulars of every patient compulsorily detained are required to be furnished by the Hospital Authorities to the Department of Health within three days of the reception of the patient into the hospital. The Department must keep a register of all detained patients, and must supply particulars from it to anyone who asks for them if the Minister considers that the request is "reasonable".

If a person detained in a Mental Hospital **escapes,** he can be arrested by a Garda, and restored to the custody of the Hospital, provided he is taken within twenty eight days of his escape. If he is not taken within that time, a new Reception Order must be made before he can be legally detained any more.

If any patient in a Mental Hospital addresses a **letter** to the Minister for Health, the President of the High Court, the Registrar of Wards of Court, a Mental Hospital Authority, or the Inspector of Mental Hospitals, the letter must be forwarded to the addressee unopened.

It is a **criminal offence,** punishable with a fine of £100 or six months' imprisonment or both, to receive or detain a person who is or is alleged to be of unsound mind, save in a Public Mental Hospital or Private Mental Institution recognised by the Department, or to conceal a patient in a mental institution, or to induce or assist in the escape of a lawfully detained patient.

What should you do if you think that you or someone you know is **wrongfully detained** in a mental institution? If you believe the patient has recovered you or he should first apply to the medical staff of the hospital for his release, and if satisfaction is not obtained apply if possible to a visiting Inspector of Mental Hospitals. If this has no result, you should write a letter to the Minister for Health, preferably sending a copy to the President of the High Court, stating that in your opinion the patient has recovered, and demanding a medical examination by doctors from outside the hospital. If the Minister orders such an examination, and on receiving the report of these doctors still refuses to release the patient, the only remaining remedy would be proceedings in the High Court.

If you think that you or another person is being wrongly detained as a patient due to some legal or technical defect in the proceedings or Reception Order under which the patient is detained, then you should seek legal advice with a view to bringing a *habeas corpus* application in the High Court. See *Section* 6(f)—**Arrest**: **Remedies**. When the solicitor has been told the facts, if there is any defect



in the legal basis of the detention, he will be able to obtain a conditional order in the High Court, the effect of which will be that the detained patient must be produced to the Court, and the hospital authority will have to show cause why the patient should not be released. It will then be possible to have a full investigation by the Court of the legality of the detention.

# 11. CONTEMPT OF COURT

The criminal law is enforced by punishing those who break it. The civil law is enforced too, but by slightly different means. If you are a party to a civil action and the Court orders you to do something (e.g. vacate premises which you have no lawful right to be in, take down a structure which you have wrongfully built, refrain from picketing unlawfully, etc.) and you fail to obey the order, then you will be in contempt of Court. In that event the Court has power to put you in prison until you change your mind and do what you were told to do—"purge your contempt", as it is called. This imprisonment is of indefinite duration. You will be released when you agree to obey the Court's order. You may also be in contempt of Court by failing to obey a Court's order of which you are aware, even though you are not a party to an action.

Also, in certain circumstances, if you fail to pay damages or costs that have been awarded against you, you may be sent to prison if the Court thinks that you are able to pay but won't. See *Section* 12—**Arrest for Debt.**

Again, if any person without proper cause (determined by the Judge) refuses to answer a question when giving evidence in Court or refuses to give evidence when called to the witness box, he is guilty of contempt of Court. You can also be arrested under a Bench Warrant if you fail to come to Court when you have received a Sub-Poena or Witness Summons to attend.

Disorderly conduct in Court or insulting language to the Judge or District Justice is also contempt of Court, and can be punished on the spot by your being sent to prison.

Another form of contempt of Court arises where you make statements—in writing or on radio or television— obstructing the course of justice or being grossly insulting to a Judge. It is, however, permissible to criticise a Court's decision provided that you do so in good faith and keep within the bounds of reasonable courtesy. You may not publish statements that would tend to influence the Court which is about to try a case, criminal or civil. For example, it would be contempt of Court to reveal that a person who is awaiting trial had previous convictions or a bad moral character, since this might prejudice his chance of a fair trial.



# 12. ARREST FOR DEBT

You can only be arrested and imprisoned for your unpaid debts upon a court order, and then only in a few limited types of cases:

(1) Under the Enforcement of Court Orders Acts, 1926 and 1940, when the District Court has made an order (called an Instalment Order) for payment of a debt by instalments, and the debtor fails to pay, the Court may order the imprisonment of the debtor for up to three months. An Instalment Order can only be obtained in special proceedings brought for that purpose by a creditor who has already obtained a Court Order against the debtor for payment of money. The Court can only make the order for imprisonment if the failure to pay was due to "wilful refusal" or to "culpable neglect". It cannot make it merely because the debtor has not the money to pay. If a debtor is imprisoned under such an order he must be released at once if the debt is paid.

(2) There is also a power given to all Courts by the Debtors (Ireland) Act, 1872, to commit a person to prison for up to six weeks for failure to pay the decree of any Court for £50 or less, but only when it is proved that the debtor has (or had since the decree was made) the money to pay. This provision is rarely used nowadays as it has been largely superseded by the more modern provisions of the Enforcement of Court Orders Acts.

(3) Under the Bankruptcy (Ireland) Act, 1872, where a debtor has previously been served with a Debtors Summons, the High Court may issue a Warrant for his arrest and imprisonment if it appears that he is about to leave the country in order to avoid paying his debts, and he may then be imprisoned for as long as the Court thinks fit.

(4) Under the Bankruptcy (Ireland) Act, 1857, if a person involved in bankruptcy proceedings refuses to answer questions properly put to him in those proceedings, or to produce books or papers which are required for them, the Judge can commit him to prison until he answers the questions or produces the books or papers.

In any case where an order for arrest or imprisonment has been made under any of these provisions, the debtor always has a right of appeal to a higher Court.

# 13. EXTRADITION

Extradition to **countries other than the United Kingdom** is possible only when the Government has made an order invoking Part II of the Extradition Act, 1965. The Government must also be a party to an extradition agreement with the other country concerned, or must have a reciprocal arrangement for extradition with that country.

In the case of extradition **from Ireland to the United Kingdom** a Warrant must have been issued by a judicial authority, such as a magistrate, in the U.K. If the warrant is endorsed by the Commissioner, Deputy Commissioner, or Assistant Commissioner of the Garda Siochana, it can be executed by any Garda in any part of this country. The warrant must give the name of the person sought to be extradited, if it is known, or it must state that it is not known and give a description which is so clear as to leave no doubt as to the identity of the person. It is essential that it state the offence alleged and the place where it was committed.

The person arrested under the warrant must be brought before the District Court for an Extradition Order, and this can only be made if the alleged offence is either indictable or punishable by at least six months imprisonment. The offence must also correspond to an offence under Irish law. It has been decided by the Supreme Court that it is the duty of a District Justice to satisfy himself that the offence does so correspond in every respect. The order need not state that a warrant has been issued, or the date and place of the offence, but it must specify the place at which the person is to be handed over and the police of the particular district in the U.K. to whom he is to be handed over. It cannot order merely that he be handed over to "the British Police".

There are certain offences in respect of which you cannot be extradited: political offences, offences connected with political offences, offences under military law which are not offences under criminal law, and revenue offences.

If an order for your extradition to the United Kingdom is made by the District Court, it must not be carried out (except with your consent expressed in open court) until fifteen days have elapsed from the date of the order. Within that time you, or anyone on your behalf, may apply to the High Court for an order of *habeas corpus*, on the ground of some defect in the Extradition Order, or for your release on the ground that the offence you are alleged to have committed is one of the types of offences for which extradition cannot be ordered.

A husband who deserts his wife and children may be extradited from the United Kingdom and brought back to Ireland, but only



where he has been guilty of "child neglect", which includes assault, maltreatment, neglect, abandonment, injury to health, failure to provide adequate food, clothing, medical aid, or lodging; and the offence must have been committed here. Mere neglect of the wife will not be sufficient.

The process of extradition **from the United Kingdom to Ireland** is the same as from Ireland to the United Kingdom.

## 14. ALIENS

An "alien" means anyone who is not a citizen of Ireland, and the position of aliens, both when attempting to enter the State and when residing in it, is regulated principally by the Aliens Act, 1935, and various Aliens Orders made under it. Once legally resident in the State, an alien may vote in Local Government, but not parliamentary elections, and he has the same rights and duties under the law as a citizen, except that he cannot own agricultural land or certain other types of property, and cannot change his name without permission. An alien may, after residing here for at least one year, apply to the Minister for Justice to become a naturalised Irish citizen, but the Minister may grant or refuse such an application in his discretion, and no period of residence here qualifies an alien for citizenship automatically. Any person born here, however, even though his parents are aliens, is an Irish citizen from birth.

An alien may be refused permission to enter the State, either altogether or unless he can satisfy an Immigration Officer of a number of matters, the most important of which are that he can support himself while here and, (if he is coming to work here) that a work permit has been issued to his employer. He may be allowed to remain here only on conditions (such as that he reports regularly to the Gardai) and if the alien breaks any such conditions he may be detained and deported.

Citizens of the United Kingdom and colonies, the British Commonwealth, and South Africa, cannot be refused entry if they can satisfy an Immigration Officer of their ability to support themselves while here and of some other matters; but citizens of Commonwealth countries and South Africa are not allowed to enter here if an Immigration Officer has reason to believe that they intend to go from here to the United Kingdom, and that they would be refused entry there.



## 15. LEGAL AID

If you are accused of a criminal offence, you are entitled to free legal aid if you have insufficient means to provide for your own defence. When you appear in Court, you must ask the District Justice or Judge for legal aid. You will have to satisfy the Court that you have insufficient means to provide for your own defence and that legal aid is essential to ensure justice. You may be required by the Court to furnish a written statement as to your means, and there are penalties if you make a false or misleading statement. If satisfied, the Court will give a Legal Aid certificate and you may nominate any solicitor who is on the Legal Aid Panel, or if you prefer, the Court will select a solicitor for you. If you are in custody there is usually no difficulty in obtaining a certificate if your case is being heard in the Circuit Court or Central Criminal Court. If you are refused a legal aid certificate for an appeal against conviction or sentence (including an appeal on a point of law to the Supreme Court) then you may apply for legal aid to the court to which you are appealing against your conviction or sentence. You may do this either by writing a letter to the Registrar of that court, setting out the facts and the grounds of your application for legal aid, or by applying to the court itself when you appear there.

Legal aid is available in the Children's Court in the same way as in other courts hearing criminal cases.

There is no legal aid in civil cases.

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