

SECTION 8 GARDA SÍOCHÁNA ACT 2005

General Direction No. 2

The Director of Public Prosecutions, pursuant to the powers conferred on him by section 8 (4) of the Garda Síochána Act 2005, hereby gives the following direction concerning the institution and conduct of prosecutions by members of the Garda Síochána, which direction shall enter into effect on 7 December 2009: -

1. Subject to the terms of this or any subsequent direction a member of the Garda Síochána may institute and conduct in the District Court any prosecution for a criminal offence, whether the offence is a summary offence or an indictable offence. Any such prosecution shall be taken in the name of the Director of Public Prosecutions.
2. The decision as to whether a prosecution should or should not be instituted shall be taken by the Director of Public Prosecutions in the following category of cases: -
 - (a) An offence arising from an unlawful killing (including any case of murder, manslaughter, fatal road accident or other fatal accident). Where the victim is deceased no other charge arising from the same incident should be preferred without prior directions. Likewise, where the victim is seriously injured and in danger of dying no charge should be preferred without prior directions.
 - (b) An offence of causing serious harm contrary to section 4 of the Non-Fatal Offences against the Person Act, 1997.
 - (bb) An offence of threatening to kill or cause serious harm contrary to section 5 of the Non-Fatal Offences against the Person Act, 1997
 - (c) An offence under sections 51A, 52 or 53 of the Road Traffic Act, 1961, as amended, which has resulted in serious injury being suffered by another road user.
 - (d) An offence of a sexual nature.

- (e) An offence of assaulting a member of the Garda Síochána, unless the charge is sanctioned by a member of the Garda Síochána of the rank of Inspector or higher.
- (f) Cases involving allegations against members of the Garda Síochána other than minor road traffic cases. Directions should be sought from the Director or Public Prosecutions in any case raising a serious issue as to whether the driving of a Garda amounted either to dangerous driving or careless driving.
- (g) Harassment contrary to section 10 of the Non-Fatal Offences against the Person Act, 1997.
- (h) Endangerment contrary to section 13 of the Non-Fatal Offences against the Person Act, 1997.
- (hh) Breach of the peace contrary to common law.
- (i) False imprisonment.
- (j) A terrorist offence and any offence related to terrorism including any offence under the Offences Against the State Acts, 1939 to 1998.
- (k) Any case in which it is proposed to seek a trial in the Special Criminal Court.
- (l) An offence of possession or use of a firearm or ammunition other than possession without a certificate.
- (m) An offence under the Explosive Substances Act, 1883.
- (n) Any allegation of assault arising from a sporting encounter.
- (o) An offence under the Official Secrets Act, 1963.
- (p) Bribery and corruption.
- (q) An offence by an elected official or a public official alleged to have been committed in the course of carrying out official functions.
- (r) Genocide, war crimes, crimes against humanity, piracy and hijacking.
- (s) Cases in which it is provided by statute that proceedings may not be commenced without the consent of the Director of Public Prosecutions.

3. (1) The Director of Public Prosecutions consents to summary disposal in the following category of cases without submission of a Garda file:
 - (a) An offence under section 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 (the Act of 2001) (theft) where the property appropriated does not exceed €7,000 in value.
 - (b) An offence under section 8 of the Act of 2001 (making off without payment), where the property obtained does not exceed €7,000 in value.
 - (c) An offence under section 12 of the Act of 2001 (burglary) where any property taken does not exceed €7,000 in value.
 - (d) An offence under section 15 of the Act of 2001 (possession of certain articles).
 - (e) An offence under section 17 of the Act of 2001 (handling stolen property) where the property does not exceed €7,000 in value.
 - (f) An offence under section 18 of the Act of 2001 (possession of stolen property) where the property does not exceed €7,000 in value.
 - (g) Any offence under Part 4 of the Act of 2001 (forgery offences) where the property does not exceed €7,000 in value.
 - (h) Attempts to commit offences at (a), (b), (c), (d), (e), (f) or (g) above.
 - (2) A direction as to whether a case can be disposed of summarily should be sought in the usual manner in relation to the other offences under the Act of 2001.
 - (3) The Garda having carriage of the case should consider forwarding a file to the Director of Public Prosecutions in any case where, although the offence or offences are captured by the above general consent, the multiplicity of the charges or the previous record of the accused or other aggravating circumstances suggest that summary disposal would be inappropriate or that a 12 months sentence (or in the case of more than one offence a 24 month sentence) would be inadequate.
4. (1) The Director of Public Prosecutions elects for summary disposal in the following category of cases without submission of a Garda file:

- (a) Any offence under section 3 of the Non-Fatal Offences against the Person Act, 1997.
- (b) Any offence under section 112 of the Road Traffic Act, 1961, as amended.
- (c) Any offence under section 3 of the Casual Trading Act, 1995.
- (d) An offence under section 15 of the Misuse of Drugs Act, 1977, where in the opinion of the Garda the market value of the drugs does not exceed
 - (i) in the case of cannabis or cannabis resin an amount of €1,500
 - (ii) in the case of diamorphine, LSD (lysergic acid diethylamide) or cocaine an amount of €500 and
 - (iii) in relation to any other controlled drug an amount of €1,000.
- (e) Any offence under section 3 of the Misuse of Drugs Act, 1977, (for all controlled drugs).
- (ee) An offence under section 15C of the Misuse of Drugs Act, 1977 (as inserted by section 83 of the Criminal Justice Act 2006) [supply of controlled drugs into prisons etc], provided the accused is not employed by the State, where in the opinion of the Garda the market value of the drug does not exceed
 - (i) in the case of cannabis or cannabis resin an amount of €1,500
 - (ii) in the case of diamorphine, LSD (lysergic acid diethylamide) or cocaine an amount of €500 and
 - (iii) in relation to any other controlled drug an amount of €1,000.
- (f) Any offence under the Criminal Damage Act, 1991 where the property does not exceed €7,000 in value.
- (g) An offence under section 9(1) of the Firearms and Offensive Weapons Act 1990, as amended by section 39 of the Criminal Justice (Miscellaneous Provisions) Act 2009.

- (h) An offence under section 36 of the Prisons Act 2007 [unauthorised possession or use of a mobile phone etc in a prison], provided the accused is not employed by the State.
 - (i) A breach of section 12 of the Sex Offenders Act 2001, as amended by section 13(b) of the Criminal Law (Human Trafficking) Act 2008.
- (2) The Garda having carriage of the case should consider forwarding the file to the Director of Public Prosecutions in any case where, although the offence or offences are captured by the above election, the multiplicity of the offences or the previous record of the accused or other aggravating circumstances suggest that summary disposal would be inappropriate or that a 12 month sentence (or in the case of more than one offence a 24 month sentence) would be inadequate.
5. The Garda Síochána must seek the consent of the Director of Public Prosecutions to an accused being sent forward for trial or being sent forward for sentence on a signed plea.
6. The Garda Síochána are encouraged to seek directions in any case, even of a summary nature, where there is an unusual question of law involved, where the charge is without fairly recent Irish precedent or where the matter has aroused unusual public interest, or is likely to do so.
7. (1) No existing Garda HQ directive concerning the instituting and conduct of the prosecution of offences, unless incorporated in this or any subsequent general direction shall be considered a general direction for the purposes of section 8.
- (2) Any such existing circular or directive may however be considered as guidance for the investigation or prosecution of offences, unless its terms have been amended or rescinded by this general direction or any subsequent general direction. Likewise, unless incorporated into this or any subsequent general direction the Guidelines for Prosecutors shall not be considered a general direction for the purposes of section 8.
8. In this general direction a reference to the Director of Public Prosecutions where the context so admits includes a reference to a professional officer of the Director directed pursuant to section 4 of the Prosecution of Offences Act, 1974, to perform a function of the Director.

9. General Direction No 1 (of 23 January 2007) will cease to have effect on 7 December 2009

Signed this 3rd day of December 2009

James Hamilton
Director of Public Prosecutions

Explanatory note:

The following changes have been made in this direction:-

The addition of paragraphs 2(bb), 2(hh), the words “or use” in paragraph 2(l), the words “of the Act of 2001” in paragraph 3(1)(f), paragraphs 4(1)(ee), 4(1)(g), 4(1)(h), and 4(1)(i).

In paragraph 2(q) “in the course of carrying out official functions” replaces “in an official capacity”.

The words “provided that where the building entered was a dwelling no occupant was on the premises at the time of the burglary” have been deleted from paragraph 3(1)(c).

The words “including the burglary of a dwelling house which is occupied” have been deleted from paragraph 3(2).