

DETENTION PERIODS

This document is provided as general guidelines only.

The document includes a summary of the following:

- Powers of detention
- Periods excluded in calculating the detention period
- Powers of arrest
- Powers of re-arrest
- Treatment of Persons in custody

N.B:

All legislation listed below is summarised and not intended to be used for any purpose other than for quick reference. For a more detailed view, the Acts themselves and any amendments, repeals and substitutions, should be consulted. Legal resources such as www.Irishstatutebook.ie may be useful.

Powers of Detention

Section 4 – Criminal Justice Act 1984

24 Hours - Maximum Period of Detention

- 6 Hours – Granted by Member in Charge (MiC)
- 6 Hours – Extended by Superintendent
- 12 Hours – Extended by Chief Superintendent

NB. Please note S4 CJA 1984 is a power of detention not a power of arrest. Powers of arrest are attained from other pieces of legislation, as outlined further on in this document

See Appendix 1, for reasons why the clock can be stopped during the period of detention

Section 30 – Offences Against the State Act 1939

72 Hours - Maximum Period of Detention

- 24 Hours – Granted by Arresting Member
- 24 Hours – Extended by Chief Superintendent
- 24 Hours – Application by Superintendent at the District Court

Usually involving firearms or explosives offences. Normally used for murder enquiry's, and the investigation of terrorist / subversive offences.

See Appendix 1, for reasons why the clock can be stopped during the period of detention

Section 2 – Criminal Justice (Drug Trafficking) Act 1996

7 Days / 168 hours - Maximum Period of Detention

- 6 Hours – Granted by Member in Charge (MiC)
- 18 Hours – Extended by Superintendent
- 24 Hours – Extended by Chief Superintendent
- 72 Hours – Application by Chief Superintendent to District Court
- 48 Hours – Application by Chief Superintendent to District Court

Usually involving offences under the Misuse of Drugs Act Sec 15 or 15A, Possession for Sale or Supply. Other offences are on the schedule for this detention.

See Appendix 1, for reasons why the clock can be stopped during the period of detention

Section 42 Criminal Justice Act 1999

24 Hours - Maximum Period of Detention

- 6 Hours – Granted by Member in Charge (MiC)
- 6 Hours – Extended by Superintendent
- 12 Hours – Extended by Chief Superintendent

Section 50 – Criminal Justice Act 2007

7 Days / 168 hours - Maximum Period of Detention

- 6 Hours – Granted by Member in Charge (MiC)
- 18 Hours – Extended by Superintendent
- 24 Hours – Extended by Chief Superintendent
- 72 Hours – Application by Chief Superintendent to District Court
- 48 Hours – Application by Chief Superintendent to District Court

To include the following offences;

- murder involving the use of a firearm or an explosive
- murder to which section 3 of the Criminal Justice Act 1990 applies [capital murder]
- an offence under section 15 of the Firearms Act 1925 (as substituted by section 42 of the Criminal Justice Act 2006) [possession of firearms or ammunition with intent to endanger life or cause serious injury to property]
- an offence under section 15 of the Non-Fatal Offences against the Person Act 1997 [false imprisonment] involving the use of a firearm
- organised crime offences of conspiracy (Section 71) organised crime (Section 72) and commission of offences for criminal organisation (Section 73) as set out in the Criminal Justice Act 2006.

See Appendix 1, for reasons why the clock can be stopped during the period of detention

Periods Excluded in calculating the detention period

Appendix 1 – Clock Stop During Detention

The clock may stop running in relation to the detention periods outlined above under Section 4 and Section 42 in the following situations:

If the Member In Charge (MiC) authorises suspension of questioning for a specified period between midnight and 8am to allow the detainee to rest, then that rest period will be excluded when calculating the period of detention. If the person is detained under Section 4 CJA 1984 the prisoner must consent to the suspension of questioning.

If the detainee is in need of medical attention and is taken out of the Garda station the period that the detainee is absent from the station will be excluded when reckoning the period of detention.

Where detainee is taken to a court in connection with an application relating to the lawfulness of his detention, the time during which he is absent from the station for that purpose will be excluded when reckoning the period of detention.

Powers of Arrest

Statutes conferring a power of arrest

Numerous statutes create a power of arrest in relation to specific offences – these include (note that this is by no means an exhaustive list):

- Criminal Law Act 1997, s 4
- Section 30 Offences Against the State Act 1939
- Misuse of Drugs Act 1977, s 25
- Criminal Justice (Public Order) Act 1994, s 24
- Firearms and Offensive Weapons Act 1990, s 14
- Criminal Damage Act 1991, s12

Note: Section 4 of the Criminal Law Act 1997 is the most widely used Power of Arrest. It covers any offence which carries a penalty on indictment of 5 years or more.

An arrestable offence is defined in section 2(1) of the Act as:
“an offence for which a person of full capacity and not previously convicted may, under or by virtue of any enactment or the common law, be punished by imprisonment for a term of five years or by a more severe penalty and includes an attempt to commit any such offence”

- Section 42 Criminal Justice Act 1999

Empowers a Judge of the District Court to authorise a member of An Garda Síochána to arrest a prisoner*, and take him to a Garda station for possible detention there, once such Judge is satisfied, by way of information supplied on oath by a Garda Superintendent or person of higher rank, that there are reasonable grounds to suspect that such prisoner has committed an offence other than that for which he has been imprisoned.

*("prisoner" means a person who is in prison on foot of a sentence of imprisonment, on committal awaiting trial, on remand or otherwise)

Powers to re-arrest

Section 10 Criminal Justice Act 1984

Gives the power to re-arrest on the authority of a justice of the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of superintendent that further information has come to the knowledge of the Garda Síochána since the person's release as to his suspected participation in the offence for which his arrest is sought. A person arrested under that authority shall be dealt with pursuant to *section 4*. A person may also be arrested for any offence for the purpose of charging him with that offence forthwith.

Treatment of Persons in Custody

Treatment of Persons in Custody Regulations

The treatment of persons in custody regulations are the regulations which cover a prisoners legal entitlement.

They are derived from Regulation 8, Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006.

A copy of these rights is supplied to all persons in custody on entering the Garda station when their details are entered in the Custody Record (C84), the form handed to the prisoner is the C72(S).

It outlines the following;

- Legal Advice

- Medical Treatment
- Telephone Calls and Personal Visits
- Searches
- Provision of Meals
- The taking of Photographs, Fingerprints and other bodily samples

Please find a complete copy of the C72(s) attached.

The above document is provided as guide only and was reviewed on 14 February 2012.