

Press release

Minister Helen McEntee publishes independent review of State's primary counter-terrorism legislation

From [Department of Justice \(/en/organisation/departments-of-justice/\)](/en/organisation/departments-of-justice/)

Published on 21 June 2023

Last updated on 29 June 2023

The Minister for Justice Helen McEntee has published the review of the Offences Against the State Acts following its consideration by Cabinet on Tuesday.

The Independent Review Group, chaired by Mr Justice Michael Peart, a former judge of the Court of Appeal, was appointed by the Minister in 2021 to examine all aspects of the Offences Against the State Act 1939-1998, the State's primary counter-terrorism legislation.

The Group was asked to take into account the current threat posed by domestic/international terrorism and organised crime, the duty to deliver a fair and effective criminal justice system to ensure the protection of communities and the security of the State, and Ireland's obligations in relation to constitutional and ECHR rights and international law.

The chairperson of the Review Group submitted reports from a majority and minority of its membership.

Minister McEntee is now publishing both reports.

Minister McEntee said:

"The Offences Against the State Acts and the Special Criminal Court have served us, and continue to serve us, well in tackling subversives and organised crime and fulfilling a key role in our criminal justice system.

"And next week I will again seek support from all parties in the Oireachtas for the renewal of certain provisions of the Acts for another year, as is committed to in the Programme for Government.

"Given how well these pillars of our criminal justice system have worked over many decades, any proposals for reform must be thoroughly considered and treated with the utmost care.

"That is why I am very thankful to the Chairperson of the review group, Mr Justice Michael Peart, for leading this important work and I very much appreciate the dedicated effort and input of all the members.

"There is much to digest and reflect on in the majority's package of recommendations and also in the perspective of the minority.

"As I have said, the Offences Against the State Acts have stood the test of time for 80 years and it is important that we take the time to consider carefully how best to proceed.

"With this in mind I have asked my officials to consult with other relevant departments and the Garda Commissioner, the Office of the DPP and the Courts Service to inform the preparation of a substantive response for consideration by Government in due course.

"I have also asked them to consult with the Irish Human Rights and Equality Commission to ensure that a broad human rights perspective is captured.

"However, it is absolutely vital that we continue to annually renew the relevant provisions of the Offences Against the State Acts pending these detailed considerations, and I look forward to bringing motions before the Houses in this regard next week."

Commenting on the majority's recommendation to replace the current Special Criminal Court with a new special court, with additional safeguards and transparency, the Minister said:

"The Special Criminal Court eliminates the very real risk to jurors and potential jurors posed by subversives and organised criminal groups.

"And, while it is of course the case that trial by jury must be preserved to the greatest extent possible, we cannot ignore the threat posed to the security of the State by such groups. It is also the case that the Special Criminal Court is only used in limited circumstances for the most serious criminal cases, with 25 cases tried there in 2020 and 2021.

"The majority's assessment is that there is, and will continue to be, an ongoing need for a special court, as permitted by the Constitution, to try a portion of the most serious criminal offences in certain limited and exceptional circumstances. Such an assessment requires serious consideration in the context of continuing to safeguard the security of the State and our citizens.

"I note that the majority has not simply recommended that a standing non-jury court be legislated for but has also devised a suite of proposals in relation to how it might operate to ensure that the rights of accused persons are fully respected, and to support transparency and promote public confidence.

"Again, these proposals will require detailed consideration in the period ahead. My priority will be to safeguard the operation of the criminal justice system against those who would seek to undermine it. Community safety must be at the centre of all our policies."

Acknowledging that the Review Group did not reach consensus on all matters, the Minister said:

"While there is consensus among the Review Group members that the Acts should be repealed there is some divergence on what should replace them particularly in relation to a special court, belief evidence and proscription. This does not take from the value of the comprehensive work undertaken by the Review Group. Their task was not an easy one; it involved grappling with the complex question of where to strike the balance between measures to counter the activities of ruthless paramilitary and organised crime groups with the right of an accused person to trial by jury. These are matters on which individual experts may hold different views as indeed was the case with the last comprehensive review – the 2002 Hederman review.

"I note that the minority, while not endorsing the recommendation of the majority for a standing non-jury court, accepts that recourse to juryless courts may be warranted in the interests of justice where there is 'a real and present danger of jury intimidation.'"

Setting out the next steps, the Minister said:

"In parallel with the consultative process I will be discussing with my officials the work already in train in my department in relation to juries to identify any additional measures - short of non-jury trials - which might in certain cases mitigate the risk of intimidation or other interference.

"I also intend, having regard to the concern of the majority and the minority in relation to the limited data available in respect of the operation of the Special Criminal Court and the extent of jury and witness intimidation, to engage with An Garda Síochána, the DPP and the Courts Service to identify what improvements could be made in the collation and publication of data relating to these matters to support independent scrutiny and promote public confidence."

The Minister concluded by saying:

"I would like to reiterate my gratitude to the Chairperson Mr Justice Peart and the members for their commitment over the last two years. While its work has taken somewhat longer than anticipated at the outset, it is clear that the Group approached its task with rigour – commissioning research and analysis and undertaking extensive consultations with State agencies, other experts in this jurisdiction and elsewhere, civil society and the wider public to inform its deliberations. I thank all those who took the time to contribute to the Group's work."

The reports are available at [Offences Against the State Act - Independent Review Group Reports. \(/en/collection/2a833-offences-against-the-state-review-report/\)](https://www.gov.ie/en/press-release/2a833-offences-against-the-state-review-report/) Further information on the work of the Review Group is available at www.oasareview.ie. (<https://www.oasareview.ie/>).



Offences Against the State Act - Independent Review Group - Report of the Majority

[Download \(https://assets.gov.ie/261194/ccaf5dfd-a74e-4583-8694-83705e44e3d7.pdf\)](https://assets.gov.ie/261194/ccaf5dfd-a74e-4583-8694-83705e44e3d7.pdf)

[View \(/pdf/?file=https://assets.gov.ie/261194/ccaf5dfd-a74e-4583-8694-83705e44e3d7.pdf#page=null\)](/pdf/?file=https://assets.gov.ie/261194/ccaf5dfd-a74e-4583-8694-83705e44e3d7.pdf#page=null)



Offences against the State Act - Independent Review Group - Report of the Minority

[Download \(https://assets.gov.ie/261196/17d25b8a-70e4-440e-beca-a413a5d8beb9.pdf\)](https://assets.gov.ie/261196/17d25b8a-70e4-440e-beca-a413a5d8beb9.pdf)

[View \(/pdf/?file=https://assets.gov.ie/261196/17d25b8a-70e4-440e-beca-a413a5d8beb9.pdf#page=null\)](/pdf/?file=https://assets.gov.ie/261196/17d25b8a-70e4-440e-beca-a413a5d8beb9.pdf#page=null)

Notes

The Review Group was appointed by the Minister on 16 February 2021 and began its work in March 2021. In accordance with its terms of reference it provided a work plan to the Minister in April 2021 and an interim report in June 2021.

Its terms of reference and membership are as below.

A comprehensive review of the Offences Against the State Acts 1939 to 1998 was carried out by a committee under the chairmanship of former Supreme Court Judge, the late Mr Justice Anthony Hederman.

Terms of reference

Recognising the comprehensive review carried out by the Hederman Committee in 2002, the Review shall examine all aspects of the Offences against the State Acts 1939 to 1998 taking into account:

- the current threat posed by domestic/international terrorism and organised crime

- the duty to deliver a fair and effective criminal justice system to ensure the protection of communities and the security of the State
- Ireland's obligations in relation to Constitutional and ECHR rights and international law

The review will be undertaken in consultation with the relevant stakeholders, statutory agencies and civil society organisations.

The Review will provide its intended plan of work to the Minister for Justice within one month of being commissioned.

The Review shall submit an interim report to the Minister within three months of being commissioned, including an indication of the timescale required to complete its work.

Membership

Dr Alan Greene, Senior Lecturer, University of Birmingham

Alan Greene is a Senior Lecturer in Law, Birmingham Law School, University of Birmingham, specialising in constitutional law and human rights. His research focuses on the limits of constitutionalism, judicial review and the role of courts in vindicating the rule of law. He explores these themes in the context of emergency powers, counter-terrorism, constituent power, and the judicial protection of human rights more generally.

Anne-Marie Lawlor, Senior Counsel

Anne-Marie Lawlor is a barrister specialising in criminal law. She was called to the Bar in 2000 and appointed Senior Counsel in 2017.

Caitlin Ni Fhlaitheartaigh, BL, retired Advisory Counsel, AGO

Caitlín Ní Fhlaitheartaigh served for many years as Advisory Counsel in the Office of the Attorney General.

Professor Donncha O'Connell, NUIG

Donncha O'Connell is an Established Professor of Law at NUI Galway. He was a member of the Law Reform Commission from 2012-2020 and of the Commission on the Future of Policing in Ireland from 2017-2018. He also served a term on the Legal Aid Board. From 1999-2002 he was the first full-time Director of the Irish Council for Civil Liberties.

Ken O'Leary, former senior official, Department of Justice

Ken O'Leary is a former Deputy Secretary General of the Department of Justice. During the course of a lengthy career, he worked in a wide range of areas including prisons, law reform, crime, security and Northern Ireland.

The Hon Mr Justice Michael Peart, Chairperson

Michael Peart is a former senior judge who served in the Court of Appeal from 2014-2019 and the High Court from 2002 to 2014.

Part of

Policies

[Justice - What we do \(/en/policy/82c59-justice/\)](/en/policy/82c59-justice/)

Help us improve gov.ie

[Leave feedback](#)

Departments and publications

[Circulars \(/en/circulars/\)](/en/circulars/)

[Consultations \(/en/consultations/\)](/en/consultations/)

[Directory \(/en/directory/\)](/en/directory/)

[Policies \(/en/policies/\)](/en/policies/)

[Publications \(/en/publications/\)](/en/publications/)

About gov.ie

[About gov.ie \(/en/help/about-govie/\)](/en/help/about-govie/)

[Accessibility \(/en/help/accessibility/\)](/en/help/accessibility/)

[Privacy policy \(/en/help/privacy-policy/\)](/en/help/privacy-policy/)

[Who does what \(/en/help/e170a-who-does-what/\)](/en/help/e170a-who-does-what/)



Rialtas na hÉireann
Government of Ireland

Manage cookie preferences

[Manage preferences](#)