

T H E   L A W   R E F O R M   C O M M I S S I O N

A N C O I M I S I Ú N U M A T H C H Ó I R I Ú A N D L Í

(LRC 14 - 1985)

R E P O R T O N O F F E N C E S U N D E R T H E D U B L I N P O L I C E A C T S  
A N D R E L A T E D O F F E N C E S

I R E L A N D  
The Law Reform Commission,  
Ardilaun Centre, 111 St Stephen's Green, Dublin 2.

444

© Copyright The Law Reform Commission 1985  
First Published 1985.

## THE LAW REFORM COMMISSION

REPORT ON OFFENCES UNDER THE DUBLIN POLICE ACTS  
AND RELATED OFFENCES

## CHAPTER 1 INTRODUCTION

1.1 In its First Programme<sup>1</sup> for the examination of certain branches of the law with a view to their reform the Law Reform Commission indicated that it proposed to examine the law relating to minor offences concerned with public peace and order. The Commission's view was that the existing statutory law in this area (e.g. the Vagrancy Acts and Dublin Police Acts) required to be amended and consolidated or replaced.

1.2 The Commission's Report No. 11 (LRC 11-1985) dealt with the Vagrancy Acts and related provisions. This Report deals with that part of paragraph 10(5) of the First Programme which refers to the Dublin Police Acts. The Report also covers a number of provisions of legislation other than the Vagrancy Acts which are so closely related to certain provisions of those Acts as to warrant review in conjunction with them. It does not, however, attempt to review the provisions generally of such other legislation.

1.3 This Report examines only offences under the Dublin Police Acts and provisions relating to police powers of search, arrest etc. It does not examine the many provisions of those Acts that relate to administrative matters. Most, if not all, of those other provisions would on the face of things appear to be capable of being repealed without replacement.

1.4 Some of the provisions of the Dublin Police Acts (e.g. section 14(11) of the Dublin Police Act 1842 which relates to loitering or soliciting by a common prostitute in a public place) have already been reviewed in Report No. 11 (LRC 11-1985) because they are so closely related to certain provisions of the Vagrancy Acts.

---

<sup>1</sup> Prl. 5984.

## CHAPTER 2 HISTORICAL BACKGROUND<sup>1</sup>

2.1 Up to the end of the eighteenth century crime prevention and detection in Ireland, as in Britain, lacked system and organisation. The policing of Dublin at that time was administered by the parishes, which operated a largely ineffective night watch system. There were no police on duty by day. Each parish nominated fifteen men to watch in turn. Each group of watchmen was supervised by a constable nominated by the church warden and parishioners.

2.2 Towards the end of the eighteenth century a serious attempt to improve this rudimentary police force was begun. In 1785 a London and Westminster Police Bill was introduced in the British House of Commons in an attempt to bring about a fundamental change in the approach to the crime problem in London. It was opposed by influential people, who feared the increase in power that it would give to the government, and was defeated. However, in 1786 a similar measure was passed by the Irish Parliament for the Dublin metropolitan area entitled "An Act for improving the police of the City of Dublin".<sup>2</sup> The Act set up a Dublin metropolitan district consisting of the area inside the Circular Roads and inside the walls of the Phoenix Park. The Lord Lieutenant was empowered to appoint three magistrates of the City of Dublin to be commissioners of police, vested with responsibility for preventing and detecting crime. The metropolitan district was divided into four divisions, with ten petty constables and a chief constable in each district who were appointed by the commissioners. There was also a high constable appointed by the commissioners, who was in charge of the whole metropolitan district. The approval of the Lord Lieutenant was required to the appointments of the high constable and the chief constables. The existing parish watches were brought under the control of the commissioners and the commissioners were required to employ in addition

---

<sup>1</sup> See Breathnach, The Irish Police (1974); Curtis, History of the Royal Irish Constabulary (1878); McDowell, The Irish Administration (1964), pp. 141-2; Broeker, Rural Disorder and Police Reform in Ireland, 1812-1836 (1970); Report of the Committee of Inquiry into the Royal Irish Constabulary and the Dublin Metropolitan Police (1914). For the English position see Reith, A New Study of Police History (1956); Keeton, Keeping the Peace (1964).

<sup>2</sup> 26 Geo. 3, c. 24.

four hundred watchmen and forty constables of the watch to oversee the watchmen. In all, then, the commissioners were in control of a force of about 750.<sup>3</sup> The Lord Lieutenant was empowered to appoint magistrates for each of the four divisions, one of whom in each division was to be resident. The Act also provided for certain offences on the part of suspected thieves, publicans, vagrants and loiterers, night walkers and persons gaming or tippling in public, and conferred powers of arrest and search on the commissioners and constables in respect of such offences.

2.3 The effect of the 1786 Act was that it created "a professional police force based on Dublin".<sup>4</sup> In 1795 the 1786 Act was replaced by an "Act for more effectually preserving the peace within the city of Dublin and the district of the metropolis, and establishing a parochial watch in the said city".<sup>5</sup> The number of divisions in the metropolitan district was reduced from four to two. The three commissioners of police were replaced by a superintendent magistrate for the whole district. Each of the two divisions was to have a magistrate called a divisional justice. The superintendent magistrate and the divisional justices were elected by the Corporation and presented for approval to the Lord Lieutenant and the privy council. The superintendent magistrate was empowered to employ twenty five petty constables and one chief constable in each of the two divisions and to appoint, with the approval of the Lord Lieutenant, a high-constable of the peace for the whole district. The constables were to be "furnished with proper arms and accoutrements". The parish watches were to be available to assist the superintendent magistrate and were subject to the lord mayor and churchwardens.

2.4 The Dublin Police Magistrates Act 1808<sup>6</sup> repealed the 1795 Act. It extended the metropolitan district to cover all places within eight miles of Dublin Castle in every direction. The government was once again given a direct part to play in the appointment of the upper echelons of the Dublin police. The new district was divided into six

---

<sup>3</sup> See McDowell, op. cit., p. 137.

<sup>4</sup> Keeton, op. cit., p. 124.

<sup>5</sup> 35 Geo. 3, c. 36.

<sup>6</sup> 48 Geo. 3, c. 140.

divisions and there were to be eighteen divisional justices in all in charge of the force. Six of these were elected by the Corporation and twelve were appointed by the Lord Lieutenant and he was also enabled to appoint one of them as chief magistrate of police. Six of the eighteen justices were to be barristers of not less than six years' standing. The divisional justices were to appoint a chief constable and to retain the existing clerks and constables. The Dublin Justices Act 1824<sup>7</sup> provided for the reduction of the number of districts from six to four and of the number of elected and appointed justices from six and twelve to four and eight respectively. The parish watches still continued in being under the supervision of the divisional justices.

2.5 In the early 1830's there were two hundred constables and five hundred watchmen. The whole establishment was expensive and inadequate, the watchmen often being "decrepit, worn-out old men".<sup>8</sup> The Dublin Police Act 1836<sup>9</sup> provided for the reorganisation of the Dublin police along the same lines as that provided for in relation to the London police by the Metropolitan Police Act 1829. It enabled the Lord Lieutenant to establish a new police office in Dublin city and to appoint two persons as justices of the peace of that office for the Dublin metropolitan district under the direction of the Chief Secretary. A police force for the whole district was to be appointed by the directions of the Chief Secretary. It was to be under the control of the justices and they were empowered to make regulations for the management of the force and to suspend or dismiss policemen. The Act provided for the financing of the force, for the powers and duties of policemen, for certain offences, etc.

2.6 The Dublin Police Act 1837<sup>10</sup> redefined the Dublin metropolitan district, designated the two justices of the peace of the Dublin metropolitan police district as commissioners of police for that district, provided for the levying of a police rate and enabled the Lord Lieutenant in council to divide the district into no more than four divisions, with one office in each and two or three justices

---

<sup>7</sup> 5 Geo. 4, c. 102.

<sup>8</sup> McDowell, op. cit., p. 137.

<sup>9</sup> 6 and 7 Will 4, c. 29.

<sup>10</sup> 7 Wm. 4 & 1 Vic., c. 25.

attached, of whom one was to be a barrister. The Dublin Police Act 1842<sup>11</sup> provided for a comprehensive set of summary offences penalising various nuisances and breaches of public peace and order. It also provided for fairly wide-ranging powers of arrest and search on the part of the police and for the issue of summonses and the trial of offences by divisional justices. The Dublin Police Act 1859<sup>12</sup> provided for the replacement of the two commissioners of police by a Chief Commissioner and an Assistant Commissioner and enabled the Lord Lieutenant to abolish the divisions of the metropolitan district and to constitute for the whole of the district such number of public offices or police courts as he deemed fit and to reduce the number of justices for the district. In 1860 the divisions were abolished and in 1868 two courts were instituted for the entire district. The number of justices was over time reduced to four and in 1901 a third court was instituted. The Dublin metropolitan police district was altered in size from time to time to keep step with extensions in the boundaries of the City of Dublin. For a description of the eventual boundaries of the district see appendix to the District Court (Areas) Order 1926.<sup>13</sup>

2.7 Outside the Dublin metropolitan police district in the eighteenth century there was an ineffective baronial constabulary and a watch force in most of the important towns. In 1787 an Act<sup>14</sup> was passed which marked the first step towards the establishment of a properly organised police force for the rest of Ireland other than Dublin. In 1814 the Peace Preservation Force was brought into existence.<sup>15</sup> Four provincial police forces were provided for by the Constabulary (Ireland) Act 1822.<sup>16</sup> The Constabulary (Ireland) Act 1836<sup>17</sup> scrapped the Peace Preservation Force and provided for the establishment of a full-time constabulary throughout Ireland (other than

---

<sup>11</sup> 5 & 6 Vic., c. 24.

<sup>12</sup> 22 & 23 Vic., c. 52.

<sup>13</sup> S.R. & O. 1926, No. 52.

<sup>14</sup> 27 Geo. 3, c. 40.

<sup>15</sup> By 54 Geo. 3, c. 131.

<sup>16</sup> 3 Geo. 4, c. 103.

<sup>17</sup> 6 & 7 Will. 4, c. 113.

Dublin) for which the government would have to pay. Following the Fenian Rising of 1867 the Irish Constabulary became the Royal Irish Constabulary. Unlike the Dublin Metropolitan Police the R.I.C. was an armed force.

2.8 The achievement of Independence in 1922 brought about fundamental change in the organisation of the police in Ireland. The DMP continued to function for some time in the Dublin metropolitan police district. Outside Dublin the R.I.C. was disbanded and a new police force was set up. It was known as the Civic Guard until it was reconstituted as the Garda Siochana by the Garda Siochana (Temporary Provisions) Act 1923<sup>18</sup> which was soon superseded by the Garda Siochana Act 1924.<sup>19</sup> The Police Forces Amalgamation Act 1925<sup>20</sup> provided for the amalgamation of the Dublin Metropolitan Police with the Garda Siochana. It provided for the abolition of the Dublin police rate and changed the name of the Dublin metropolitan police district to the "Dublin Metropolitan Area". It is in that Area that offences under the Dublin Police Acts can now be committed and that the Garda Siochana can exercise the various statutory powers and functions granted under the unrepealed sections of those Acts. The 1925 Act made no change in the extent of this Area.

2.9 Fundamental changes in court organisation also came about after 1922. The Courts of Justice Act 1924<sup>21</sup> terminated the pre-existing courts structure and introduced a new structure comprising the District, Circuit, High and Supreme Courts. The District Court was constituted as one court of inferior jurisdiction for the whole state, which was divided into a number of districts to each of which at least one justice was assigned. The District Court was conferred inter alia with all the jurisdiction that was vested in Justices or a Justice of the Peace sitting at Petty Sessions, in Divisional Justices of the Dublin metropolitan police district and in a person acting as a Justice of the Peace under the Towns Improvement (Ireland)

---

<sup>18</sup> No. 37 of 1923.

<sup>19</sup> No. 25 of 1924.

<sup>20</sup> No. 7 of 1925.

<sup>21</sup> No. 10 of 1924.



Act 1854.<sup>22</sup> The Dublin Metropolitan District, which is called District No. 31, was originally of the same extent as the "Dublin Metropolitan Area" referred to in the Police Forces Amalgamation Act 1925 (i.e. the former Dublin metropolitan police district) but it was enlarged by the District Court Districts (Dublin) Order, 1945,<sup>23</sup> the District Court Districts (Dublin) (Amendment) Orders 1970<sup>24</sup> and 1982.<sup>25</sup>

---

<sup>22</sup> See sections 77-78 of the 1924 Act.

<sup>23</sup> S.R. & O. 1945, No. 279.

<sup>24</sup> S.I. No. 300 of 1970.

<sup>25</sup> S.I. No. 88 of 1982.

CHAPTER 3      OFFENCES BY OR RELATING TO POLICEMEN

Publican 'harbouring' policeman

3.1 Section 6 of the Dublin Police Act 1836 makes it an offence for any victualler or keeper of any house, etc. for the sale of liquors to knowingly harbour or entertain a member of the Dublin Metropolitan Police or to permit such a member to remain in the house during the time appointed for his duty as a policeman. A similar type of offence is provided for by section 74 of the Towns Improvement (Ireland) Act 1854 and section 41 of the Refreshment Houses (Ireland) Act 1860.<sup>1</sup> The most recent provision for an offence of this kind is contained in section 16 of the Licensing Act 1872,<sup>2</sup> which makes it an offence for any licensed person inter alia (i) to knowingly harbour or knowingly suffer to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or (ii) to supply any liquor or refreshment, whether by way of gift or sale, to any constable on duty unless by authority of some superior officer of such constable. The maximum penalty for a first offence under section 16 is a fine of £10; for a second or subsequent offence it is £40.<sup>3</sup> In view of section 16 of the 1872 Act the other provisions referred to can be repealed without replacement. We consider, however, that the maximum fine for an offence under section 16 should be raised to £400.

Assaulting or obstructing a policeman

3.2 Under section 9 of the Dublin Police Act 1836 any person who assaults or resists any person belonging to the

---

<sup>1</sup> 23 & 24 Vic., c. 107.

<sup>2</sup> 35 & 36 Vic., c. 94.

<sup>3</sup> The maximum penalties originally prescribed in section 16 itself were doubled by section 30 of the Intoxicating Liquor (General) Act 1924 (No. 62).

Dublin Metropolitan Police force in the execution of his duty, or aids or incites any person so to assault or resist, is guilty of an offence and liable to a fine not exceeding £5. A similar kind of offence is provided for by section 38 of the Offences Against the Person Act 1862,<sup>4</sup> whereby "[w]hosoever .... shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence" is guilty of a misdemeanour and liable to imprisonment for any term not exceeding two years. An offence under section 38 is a scheduled offence under the Criminal Justice Act 1951<sup>5</sup> and accordingly may be tried summarily provided that the conditions specified in section 2 of that Act are fulfilled. Also, by virtue of section 12 of the Prevention of Crimes Act 1871,<sup>6</sup> where any person is convicted of an assault on any constable when in the execution of his duty, such person is guilty of an offence against that Act and is liable either to a fine not exceeding £20 or to imprisonment for a term not exceeding six months, or, in the case of a previous conviction of a similar assault within two years, nine months.

3.3 Section 9 of the Dublin Police Act 1836 is redundant in view of the existence of section 38 of the Offences Against the Person Act 1861 and section 12 of the Prevention of Crimes Act 1871,<sup>7</sup> and it should be repealed. The only question is whether the two latter provisions should be left as they are, or replaced by a more modern provision. Any thoroughgoing review of the need for a specific offence of assault on a policeman should be undertaken as part of a review of offences against the person in general.<sup>8</sup> In this Report all that can be done is to assume for the present the continued need for such a specific offence and to rationalise it.

---

<sup>4</sup> 24 & 25 Vic., c. 100.

<sup>5</sup> No. 2 of 1951.

<sup>6</sup> 34 & 35 Vic., c. 112.

<sup>7</sup> In England section 8 of the Metropolitan Police Act 1829, which corresponds to section 9 of the 1836 Act, was repealed by the Statute Law Revision Act 1873.

<sup>8</sup> See the Law Reform Commission's First Programme (1976, Prl. 5984), para. 10(6).

3.4 There are in fact three distinct offences relating to policemen provided for in section 38 of the 1861 Act and section 12 of the 1871 Act, only one of which necessarily amounts to an assault:

"Resistance to a constable may occur without an assault, as where D has been arrested by P and tears himself from P's grasp and escapes. Obstruction .... embraces many situations which do not amount to an assault. On the other hand, both resistance and obstruction clearly may include assaults."<sup>9</sup>

Resistance to or obstruction of a policeman in the execution of his duty is, in the great majority of instances, not likely to be as serious a form of conduct as assaulting him. The maximum penalty for resistance and obstruction should therefore be lower than for assault.

3.5 Difficulties have arisen as regards the mens rea required for the existing offences of assault, resistance and obstruction. Under section 38 of the Offences Against the Person Act 1861 obstruction must be wilful, whereas no similar requirement is specified in relation to assault and resistance. In R v Forbes and Webb<sup>10</sup> it was held that to support a charge of assault on a constable in the execution of his duty it was not necessary that the defendant should know that he was a constable then in the execution of his duty. But it must be proved that the defendant intended an assault - he is not guilty if he reasonably believed that he was acting in self-defence.<sup>11</sup> Similar principles would appear to apply in relation to resistance but not obstruction which must be wilful. It is not sufficient for the prosecution to prove that the defendant deliberately did an act which resulted in the obstruction of a police officer - it must also be shown that he did the act with the intention of obstructing the officer in the sense of making it more difficult for him to carry out his duty.<sup>12</sup>

---

<sup>9</sup> Smith and Hogan, Criminal Law (5th ed., 1983), pp. 362-363.

<sup>10</sup> (1865) Cox C.C. 362. See also R. v Mark [1961] Crim. L. R. 173 and McBride v Turnock [1964] Crim. L. R. 456.

<sup>11</sup> R. v Mark, fn. 10 above. See also Albert v Lavin [1981] 1 All E.R. 628.

<sup>12</sup> Willmott v Atack [1976] 3 All E.R. 794.

3.6 The English cases deciding that proof of knowledge that the victim of an assault was a policeman is not required are of dubious authority and were called into question by the Supreme Court in People v Murray.<sup>13</sup> As Walsh, J. stated:<sup>14</sup>

"... the line of authority is based upon the doubtful authority of R. v Forbes,<sup>15</sup> the very facts of which are shrouded in uncertainty. It appears clear that the English courts were following this earlier decision and were prepared to abide by it, though no serious explanation has ever been given as to why it should be followed. It may well be that, because the offence is a comparatively minor one, it was decided to leave the early decision undisturbed. The same view was taken in the Supreme Court of Victoria in Australia in R. v Galvin (No.1)<sup>16</sup> but that case was overruled by the same court in R. v Galvin (No.2).<sup>17</sup> The matter came to the High Court of Australia in R. v Reynhault<sup>18</sup> where a majority of the court took the view that in such an offence knowledge was not necessary, and preferred to follow the decision in R. v Forbes."

Walsh, J. went on to indicate his own preference for the reasoning of Dixon, C.J. in his dissenting judgment in Reynoudt and for the judgment of the British Columbia Court of Appeal in R. v McLeod,<sup>19</sup> which decided that knowledge that the person assaulted was a police officer was a necessary proof.

3.7 However, a majority of the Supreme Court considered that knowledge was not required - advertence to the possibility of the victim's being a policeman would be

---

<sup>13</sup> [1977] I.R. 360.

<sup>14</sup> Ibid., at 382.

<sup>15</sup> Fn. 4 above.

<sup>16</sup> [1961] V.R. 733.

<sup>17</sup> [1961] V.R. 740.

<sup>18</sup> (1962) 107 C.L.R. 381.

<sup>19</sup> (1954) 11 Can. C. C. 106; (1955) 14 W.W.R. (N.S.) 97.

sufficient. The majority adopted the following passage from the dissenting judgment of Kitto, J. in the High Court of Australia in R. v Reynhardt:<sup>20</sup>

"It does not mean that the Crown has to prove that the respondent knew that the person he was assaulting was a policeman in the due execution of his duty. Consistently with the decision [under appeal] the necessary intention might have existed though the respondent hoped, or even believed, that the person was not a policeman or was not at the time in the due execution of his duty, provided only that his intention extended to doing to that person what in fact he did to him even if the fact should be that he was a policeman in the execution of his duty. Advertence to the possibility of his being such as policeman is, I think, required, but not knowledge."<sup>21</sup>

In other words, recklessness is sufficient mens rea as to the circumstance that the person assaulted is a policeman.

3.8 The Criminal Law Revision Committee has suggested<sup>22</sup> a change in the existing English law whereby it would have to be proved that the defendant knew that, or was reckless as to whether, the person assaulted was a police officer. However the Committee considers that it should not be necessary to prove that the defendant knew, or was indifferent whether the police officer was acting in the execution of his duty.

"We see nothing unfair in making him take the risk that his victim is acting in the execution of his duty. To require the prosecution to prove more would place an impossibly high burden on them."

---

<sup>20</sup> Fn. 18 above.

<sup>21</sup> (1962) 107 C.L.R. 381 at 389, cited in [1977] I.R. 360 at 401, 415-416 and 425.

<sup>22</sup> Fourteenth Report, Offences against the Person, (1980, Cmd. 7844), para. 172.

Hogan<sup>23</sup> has commented:

"To say that it would place an impossibly high burden on the prosecution is difficult to accept; and the difficulty, if there is one, could be met by requiring the defendant to prove that he honestly believed that the police officer was not acting in the execution of his duty. It would be a rare case where the defendant could make anything of the issue at all, but if, in circumstances such as those which occurred in Fennell,<sup>24</sup> a father honestly (and a fortiori if he honestly and reasonably) believes that his child is being illegally arrested by a police officer, it is an insensitive law which makes a criminal of him for using (given his belief) no more than reasonable force in his and his child's lawful interest. What caring parent would do less for his children?"

3.9 The Law Reform Commission considers that the requirement of knowledge or recklessness should extend to the fact that the policeman was acting in the execution of his duty, but that, if the defendant wishes to deny such knowledge or recklessness, there should be a burden on him to adduce sufficient evidence that he believed that the policeman was not acting in the execution of his duty to raise an issue on the matter (i.e. an evidential, and not a persuasive burden). If he discharged that evidential burden, the persuasive burden of showing that he knew or was reckless as to whether or not the policeman was acting in the execution of his duty would still rest on the prosecution. The mens rea for the offences of obstructing and resisting should be the same as that for assaulting a policeman.

3.10 The offence of assaulting a policeman in the execution of his duty should be triable either on indictment

---

<sup>23</sup> "Non-fatal offences" [1980] Crim. L. R. 542 at 546.

<sup>24</sup> [1970] 3 All E.R. 215. The son of the appellant in the case had been arrested by the police and the appellant had hit one of the arresting officers. The Court of Appeal, Criminal Division, rejected the submission that a father who used force to effect the release of his son from custody was justified in doing so if he honestly believed on reasonable grounds that (contrary to the fact) the arrest was unlawful.

or summarily. The maximum penalty in the event of conviction on indictment should be imprisonment for two years and/or a fine and, in the event of a summary conviction, imprisonment for six months and/or a fine of £500. Resistance to or obstruction of a policeman in the execution of his duty should be triable summarily only and the maximum penalty should be a fine of £200 and/or imprisonment for three months.

3.11 The foregoing discussion has related to assault etc. on policemen but similar principles apply as regards prison officers, sheriffs and others, the discharge of whose public duties involves a particular risk of their being assaulted. The existing offence under section 38 of the Offences Against the Person Act 1861 relates to a "peace officer". The use of this term should be retained and it should be defined to include members of the Garda Siochana, prison officers, members of the Defence Forces, sheriffs and traffic wardens.

#### Unlawful possession or wearing of police clothing etc.

3.12 Section 3 of the Dublin Police Act 1842 and section 11 of the Town Police Clauses Act 1847<sup>25</sup> made it an offence for a constable who had been dismissed or who ceased to hold and exercise his office to fail to deliver up all clothing, accoutrements etc. supplied to him. Section 4 of the 1842 Act and section 12 of the 1847 Act also made it an offence for a person who was not a policeman to have in his possession, without being able satisfactorily to account for it, any part of the clothing, accoutrements etc. of a policeman or to wear such clothing for an unlawful purpose. These matters are now satisfactorily provided for by sections 11 and 15 of the Garda Siochana Act 1924 (which were applied to the amalgamated force by section 19 of the Police Forces Amalgamated Act 1925). The earlier provisions may therefore be repealed without replacement.

---

<sup>25</sup> 10 & 11 Vic., c. 89.



Causing disaffection

3.13 Section 3 of the Constabulary and Police (Ireland) Act 1918<sup>26</sup> provided for an offence of causing disaffection among members of the police force. It applied to both the DMP and the RIC but was repealed in so far as it related to the latter by the Garda Siochana Act 1924. Section 14 of the 1924 Act (which was applied to the amalgamated force by section 19 of the Police Forces Amalgamated Act 1925) makes almost identical provision. Section 3 of the 1919 Act may be repealed without replacement.

---

<sup>26</sup> 8 & 9 Geo. 5, c. 53.

## CHAPTER 4 ROAD TRAFFIC OFFENCES

4.1 The Dublin Police Act 1842 provides for a number of offences of a road traffic nature. Similar offences are provided for in other nineteenth century legislation such as the Town Police Clauses Act 1847, the Summary Jurisdiction (Ireland) Act 1851<sup>1</sup> and the Towns Improvement (Ireland) Act 1854.

Careless or dangerous driving offences

4.2 There is a variety of offences falling under this heading. At present, an offence is committed by:-

- (1) Every person who, in any thoroughfare or public place, having the care of any cart or carriage, shall ride on any part thereof, on the shafts, or on any horse or other animal drawing the same without having and holding the reins or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same (maximum penalty: £2 fine).<sup>2</sup>
- (2) Every person who at one time drives more than two carts, and every person driving two carts or waggons, who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such

---

<sup>1</sup> 14 & 15 Vic., c. 92.

<sup>2</sup> Section 14(4) of the 1842 Act. The same offence is provided for in section 28 of the 1847 Act and section 72 of the 1854 Act and a similar offence is provided for in section 12(3) of the 1851 Act.

<sup>3</sup> Section 72 of the 1854 Act. The same offence is provided for in section 28 of the 1847 Act and a similar one is provided for by section 12(2) of the 1851 Act.

halter of a greater length than four feet from such fastening to the horse's head (maximum penalty: 50p fine).<sup>3</sup>

- (3) Every person who causes any tree or timber, or iron beam, to be drawn in or upon any carriage without having sufficient means of safely guiding the same (maximum penalty: £1 fine).<sup>4</sup>
- (4) Any driver of any cart, car, dray, or other such carriage who shall negligently or wilfully be at such distance from such carriage, or in such a situation that he cannot have the direction of the horse or horses drawing the same (maximum penalty: 50p fine).<sup>5</sup>
- (5) Every person who in any thoroughfare or public place shall ride or drive furiously, or so as to endanger the life or limb of any person, or to the common danger of the passengers in any thoroughfare (maximum penalty: £2 fine).<sup>6</sup>

4.3 All of those provisions are now virtually redundant in view of the provisions of sections 51A,<sup>7</sup> 52<sup>8</sup> and 53<sup>9</sup> of the Road Traffic Act 1961<sup>10</sup> relating to driving without

---

<sup>4</sup> Section 72 of the 1854 Act. The same offence is provided for in section 28 of the 1847 Act and a similar offence is provided for by section 10(9) of the 1851 Act.

<sup>5</sup> Section 12(4) of the 1851 Act.

<sup>6</sup> Section 14(5) of the 1842 Act. A similar offence is provided for by section 28 of the 1847 Act, section 13(4) of the 1851 Act and section 72 of the 1854 Act. Section 79 of the Public Health Acts Amendment Act 1907 (7 Edw. 7, c. 53) also prohibits dangerous riding and driving.

<sup>7</sup> As inserted by section 49 of the Road Traffic Act 1968 (No. 25 of 1968).

<sup>8</sup> As substituted by section 50 of the 1968 Act.

<sup>9</sup> As amended by section 51 of the 1968 Act.

<sup>10</sup> No. 24 of 1961.

reasonable consideration, careless driving and dangerous driving respectively. Those provisions cover the driving of "a vehicle in a public place". They are not confined to the driving of mechanically propelled vehicles and so would cover carts, carriages and animal-drawn vehicles generally. "Public place" is defined by section 2 of the 1961 Act as meaning "any street, road or other place to which the public have access with vehicles whether as of right or by permission and whether subject to or free of charge". The only form of conduct covered by some of the provisions referred to earlier above which would not be covered by sections 51A, 52 or 53 would appear to be riding a horse in a dangerous manner.

4.4 Incidents of such conduct in public places are not likely to be very frequent in modern-day conditions. However, such conduct can occur and when it does it can have many of the reprehensible qualities of dangerous driving of a vehicle. It is suggested, therefore, that an offence should be created of riding an animal in a public place in a manner that is dangerous to the public. The offence should be triable summarily only and the maximum penalty should be a fine of £400 and/or six months' imprisonment. The offence of dangerous driving under section 53 of the Road Traffic Act 1961 is triable only on indictment where death or serious bodily harm is caused to another person and the maximum penalty in this eventuality is a fine of £500 and/or five years' imprisonment. However, this more severe possible penalty is a reflection of the more particular threat posed to human life and safety by vehicular traffic and should not be provided for in the present context. It might be argued that the concept of recklessness ought to be substituted for that of dangerousness in the formulation of the offence under section 53 and accordingly of the proposed new offence also.<sup>11</sup> Although it would unduly widen the scope of this Report to examine this question, which would be best considered in the context of a review of the Road Traffic Acts, it might be mentioned that the concept of recklessness gives rise to difficulties in a road traffic context.<sup>12</sup> It might also be asked whether offences comparable to those of driving without reasonable

---

<sup>11</sup> See section 2 of the English Road Traffic Act 1972, as substituted by section 50(1) of the Criminal Law Act 1977.

<sup>12</sup> See Fourteenth Report of the English Criminal Law Revision Committee, Offences against the Person (1980, Cmd. 7844), para. 145.

consideration and careless driving should be created in relation to a person in charge of animals in a public place. It is the view of the Commission that such offences should not be created and that the matter should be left to civil liability.<sup>13</sup>

#### Animals on the road

4.5 Section 14(2) of the Dublin Police Act 1842 provides inter alia that every person who in any thoroughfare or public place shall turn loose any horse or cattle shall be liable to a penalty not exceeding £2. A similar offence is provided for by section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854. Section 14(3) of the Dublin Police Act 1842 also makes guilty of an offence every person who in any thoroughfare or public place by negligence or ill-usage in driving cattle shall cause any mischief to be done by such cattle, or who shall in anywise misbehave himself in the driving, care or management of such cattle; and also every person, not being hired or employed to drive such cattle, who shall wantonly and unlawfully drive or hunt any such cattle. Also section 10(11) of the Summary Jurisdiction (Ireland) Act 1851 (as amended by section 4(4) of the Animals Act 1985) makes it an offence to allow any swine or other beast to wander upon any public road, or about the streets or passages of any town.

4.6 These provisions should be repealed and replaced by more modern offences. It should continue to be an offence for a person to turn loose any animal or, if he is its owner or entitled to custody of it, to permit it to wander in any public place.<sup>14</sup> There should be an evidential burden on a keeper of an animal charged with such an offence to adduce evidence that he did not permit it to wander which would be sufficient to raise an issue on the matter. The Commission has already made proposals regarding the impounding of

---

<sup>13</sup> The question of drunkenness will be considered separately - see Chapter 6 below.

<sup>14</sup> See recommendation of the Commission on Itinerancy in relation to persons of no fixed abode - Report (1963), para. 14(b). See also section 155 of the English Highways Act 1980.

animals found straying on the public road.<sup>15</sup> As far as the driving or leading of animals in a public place is concerned, similar considerations would apply as in the case of riding an animal in a public place<sup>16</sup> and it is suggested that any person who drives or leads an animal in a public place in a manner dangerous to the public should be guilty of an offence. The position as regards mode of trial and maximum penalties, should be the same as for the offence of dangerous riding of an animal proposed at para. 4.4. above.

Parking, causing obstruction etc.

4.7 Section 14(6) of the Dublin Police Act 1842 makes liable to a penalty of not more than £2 every person who in any thoroughfare or public place shall cause any cart, public carriage, sledge, truck, or barrow, with or without horses, to stand longer than may be necessary for loading or unloading or for taking up or settling down passengers, except hackney carriages standing for hire in any place not forbidden by law, or who, by means of any cart etc. or any horse or other animal, shall wilfully interrupt any public crossing, or wilfully cause any obstruction in any thoroughfare. Section 28 of the Town Police Clauses Act 1847, section 17(4) of the Summary Jurisdiction (Ireland) Act 1851 and section 72 of the Towns Improvement (Ireland) Act 1854 contain provisions wholly or partially to similar effect. Also, section 13(3) of the 1851 Act prohibits the obstruction of free passage on public roads wilfully or by negligence or misbehaviour, section 12(4) of that Act makes it an offence to leave a cart etc. on a public road or street so as to obstruct the passage thereof and section 10(2) prohibits the leaving of ploughs etc. on a public road.

4.8 Those provisions are no longer required. Section 98 of the Road Traffic Act 1961 prohibits any act (whether of commission or omission) which causes or is likely to cause traffic through any public place to be obstructed. Also, Bye-law 26 of the Road Traffic General Bye-Laws 1964 lays

---

<sup>15</sup> See paras. 3.7-3.9 of our Report on Civil Liability for Animals (LRC 2-1982). Section 5 of the Animals Act 1985 deals with the subject.

<sup>16</sup> Para. 4.4 above.

down detailed rules for parking of vehicles (including animal-drawn vehicles), including requirements that the driver shall ensure that the vehicle is not likely to cause inconvenience to, obstruct or endanger other traffic and will not, in such a way as to interfere with the free movement of pedestrians along a footway, be wholly or partly on the footway or projecting over the footway.<sup>17</sup> A number of local traffic and parking bye-laws and temporary rules also lay down detailed rules for parking that apply equally to animal-drawn as to mechanically propelled vehicles.

4.9 A number of other provisions are either redundant in view of section 98 of the 1961 Act or are superfluous in modern-day conditions. Section 14(1) of the Dublin Police Act 1842 makes guilty of an offence every person who in any thoroughfare or public place shall, to the annoyance of the inhabitants or passengers expose for show or sale (except in a market lawfully appointed for that purpose), or feed or fodder, any horse or other animal, or show any caravan containing any animal or other show or public entertainment, or shoe, bleed, or farry any horse or animal (except in cases of accident), or clean, dress, exercise, train, or break any horse or animal, or clean, make, or repair any part of any cart or carriage except in cases of accident where repair on the spot is necessary. Similar provision is made by section 28 of the Town Police Clauses Act 1847, section 10(10) of the Summary Jurisdiction (Ireland) Act 1851 and section 72 of the Towns Improvement (Ireland) Act 1854. The kind of obstruction or nuisance envisaged by these provisions is unlikely to arise nowadays and any isolated instances that might arise would probably be capable of being dealt with under section 98 of the 1961 Act. The provisions can be repealed without replacement.

4.10 Section 14(9) of the Dublin Police Act 1842 provides for an offence of wilfully disregarding or not conforming oneself to regulations or directions made by the commissioners of police for regulating the route of horses,

---

<sup>17</sup> Parking vehicles on footpaths is a source of some difficulty and danger to pedestrians, especially blind people. It is true that narrow streets present particular problems for parking; perhaps the traffic authorities could with benefit examine the provisions of French law which permit the parking of vehicles extending onto the footpath up to about half a metre in narrow streets in particular areas, where these problems are not to be anticipated.

carts, carriages and persons during the time of divine service, and for preventing obstructions during public processions and on other occasions. Similar provision is made by section 28 of the Town Police Clauses Act 1847 and section 70 of the Towns Improvement (Ireland) Act 1854. Those provisions are now redundant. The control of traffic when there is an event attracting a large assembly etc. is now provided for by section 91 of the Road Traffic Act 1961.

4.11 Section 17(7) of the Dublin Police Act 1842 makes guilty of an offence every person who in any street or public place shall expose any thing for sale in any park or public garden, unless with the consent of the owner or other person authorized to give such consent, or upon or so as to hand over any carriageway or footway, or on the outside of any house or shop, or who shall set up or continue any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare. Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 contain provisions to similar effect and in addition prohibit the placing or leaving of any furniture, goods etc. on any footway (quite apart from any question of exposure for sale) and prohibit the hanging or placing of any clothes on any line, pole or cord across any street.

4.12 Most of the situations that are covered by these provisions should be capable of being covered by section 98 of the Road Traffic Act 1961. That section prohibits any act which causes or is likely to cause traffic through any public place to be obstructed. As far as obstruction of footpaths is concerned, it is not specified whether "traffic" in section 98 includes pedestrians. However, in certain other sections of the 1961 Act (e.g. sections 88 and 89) it is specified that "traffic" in those sections does not include pedestrians. This implies that otherwise it does, so it would seem that obstruction of pedestrians would be covered by section 98. If it were felt that more specific provision to deal with the placing of goods on the roadway or footway would be desirable, then the matter could more suitably be provided for in bye-laws or regulations for the general control of traffic and pedestrians<sup>18</sup> or in local traffic bye-laws or temporary rules.<sup>19</sup> Such a provision is

---

<sup>18</sup> Made under section 88 of the 1961 Act or section 60 of the 1968 Act.

<sup>19</sup> Made under section 89 of the 1961 Act.



already contained in, for example, the Dublin Traffic Bye-laws 1976,<sup>20</sup> bye-law 70 of which provides:

- "(1) A person shall not deposit goods on a roadway or footway, except where necessary either because of a fire, flood, accident or other emergency or because a vehicle is being loaded or unloaded.
- (2) Where a person deposits goods on a roadway or footway while lawfully loading or unloading a vehicle he shall take all reasonable precautions to prevent the goods from causing obstruction or avoidable inconvenience to traffic or pedestrians using the roadway or footway and shall not allow the goods to remain on the roadway or footway for longer than is necessary for the purpose of loading or unloading."

#### Driving and parking on a footway

4.13 Section 14(7) of the Dublin Police Act 1842 provides that every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck or barrow, upon any footway or curbstone, or fasten any horse or other animal so that it can stand across or upon any footway shall be guilty of an offence. Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 make similar provision. Section 9(4) of the Summary Jurisdiction (Ireland) Act 1851 also prohibits *inter alia* the riding or driving of any horse or other animal "willingly and unnecessarily" on any footpath. Those provisions can all be repealed without replacement. Bye-law 26 of the Road Traffic General Bye-laws 1964 now requires a driver parking a vehicle to ensure that it will not, in such a way as to interfere with the free movement of pedestrians along a footway, be wholly or partly on the footway or projecting over the footway. Some local parking bye-laws or temporary rules prohibit parking on a footway in any circumstances whatsoever.<sup>21</sup>

---

<sup>20</sup> S.I. No. 83 of 1976.

<sup>21</sup> See, for example, bye-law 10 of the Dublin Traffic and Parking Bye-Laws 1976 (S.I. No. 83 of 1976). Cf. our suggestion, supra p. 21, fn. 17, on this subject.

Also bye-law 15 of the 1964 General Bye-Laws prohibits a driver from driving on a footway; by virtue of bye-law 2(2) a person leading or riding an animal, whether or not the animal is pulling a vehicle, is deemed to be a driver.

4.14 Section 14(8) of the Dublin Police Act 1842 also makes it an offence to roll or carry any cask, tub, hoop, or wheel, or any ladder, plank, pole, showboard or placard, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway. Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 provide for a similar offence. Provision of this kind is not necessary in modern conditions. Civil remedies and, where appropriate, criminal proceedings for public nuisance, would suffice for any isolated instances that might arise of injury caused by the behaviour in question.

#### Other obsolete provisions

4.15 Section 13(1) of the Summary Jurisdiction (Ireland) Act 1851 requires drivers of carriages and riders of horses to keep to the left when passing oncoming traffic and to overtake on the right. These matters are now regulated by bye-laws 17 and 19 of the Road Traffic General Bye-Laws 1964 and section 13(1) can be repealed without replacement.

4.16 Section 12(1) of the Summary Jurisdiction (Ireland) Act 1851 makes it an offence for the owner of a cart etc. used for the conveyance of goods on any public road or street not to have his name and address printed on it. Section 12(8) makes it an offence for the driver of such a cart to refuse to tell the owner's name. Section 13(2) of the 1851 Act regulates the leading of a horse by a person riding another horse. If rules of this kind are still considered to be necessary they should be provided for in an amendment of the Road Traffic General Bye-Laws 1964. Section 13(5) of the same Act prohibits the driving of carts etc. on public roads or streets by children under thirteen. This provision can be repealed without replacement.

4.17 Section 16 of the Dublin Police Act 1842 prohibits the unauthorised holding, or getting, onto vehicles, a matter that is now dealt with by sections 99 and 100 of the Road Traffic Act 1961.

## CHAPTER 5 OTHER STREET OFFENCES

5.1 The Dublin Police Act 1842 and the other nineteenth-century statutes that have already been referred to also provide for a number of other offences penalising behaviour consisting in the creation of various kinds of nuisance in the street.

### Carrying out certain work in the street

5.2 Section 17(1) of the 1842 Act provides that every person who in any thoroughfare shall burn, dress, or cleanse any cork, or hoop, cleanse, fire, wash or scald any cask or tub, or hew, saw, bore, or cut any timber or stone, or slack, sift or screen any lime shall be guilty of an offence. A similar provision is contained in section 28 of the Town Police Clauses Act 1847, section 72 of the Towns Improvement (Ireland) Act 1854, and section 10(6) of the Summary Jurisdiction (Ireland) Act 1851.<sup>1</sup> Of the activities in question here, only those relating to timber, stone or lime are at all likely to arise in present-day conditions and any isolated instances of those that cause problems in a street should be capable of being dealt with under section 98 of the Road Traffic Act 1961.<sup>2</sup>

5.3 Section 72 of the Towns Improvement (Ireland) Act 1854 also prohibits the slaughter or dressing of any cattle in the street to the obstruction, annoyance or danger of the residents or passengers, except in the case of any cattle overdriven which may have met with any accident, and which for the public safety etc. ought to be killed on the spot. A similar kind of offence is provided for by section 28 of the Town Police Clauses Act 1847 and 10(4) of the Summary Jurisdiction (Ireland) Act 1851. Provision of this kind is no longer necessary.

---

<sup>1</sup> This provision also applies to binding cart wheels, beating flax and threshing or winnowing corn in the street.

<sup>2</sup> See para. 4.8 above.

Depositing materials on the street

5.4 Section 17(2) of the Dublin Police Act 1842 prohibits the throwing or laying in any thoroughfare of any coals, stones, slates, shells, lime, bricks, timber, iron, or other materials (except building materials, or rubbish thereby occasioned, which must be placed or enclosed so as to prevent any mischief happening to passengers). Section 28 of the Town Police Clauses Act 1847, section 10(5) of the Summary Jurisdiction (Ireland) Act 1851 and section 72 of the Towns Improvement (Ireland) Act 1854 contain similar provision. A more modern provision should be enacted to replace this provision, making it an offence, without lawful authority or excuse, to deposit anything on a public roadway or footpath (i) to the interruption of any road-user<sup>3</sup> (maximum penalty: a fine of £100) and (ii) in consequence of which a road-user is injured or endangered<sup>4</sup> (maximum penalty: a fine of £200). Section 29 of the Public Health Acts Amendment Act 1907<sup>5</sup> prohibits the deposit of building materials or the making of excavations in any street without the consent of the local authority and enables the local authority to take remedial action in the event of default. This provision should be replaced by a more modern one to similar effect. Road authorities would be enabled to remove anything so deposited on a public road as to constitute a nuisance.<sup>6</sup> The deposit of building materials and builders' skips on and the making of excavations in streets would be subject to the permission of the appropriate road authority and conditions might be attached to the permission. A person to whom a permission was granted would be under an obligation to ensure proper fencing, lighting etc. of the obstruction or excavation. Breach of such obligation would be an offence, as would depositing materials or a skip, or making an excavation, without permission and failure to comply with a condition attached by the road authority. Provision might also be made for the removal of builders' skips by road authorities.<sup>7</sup>

---

<sup>3</sup> See section 148(1)(c) of the English Highways Act 1980.

<sup>4</sup> See ibid., section 161(1).

<sup>5</sup> 7 Edw. 7, c. 53.

<sup>6</sup> See section 149 of the English Highways Act 1980.

<sup>7</sup> See sections 171, 139 and 140 of the English Highways Act 1980.

Throwing dirt or offensive matter in the street

5.5 Subsections (3) and (4) of section 17 of the Dublin Police Act 1842 make the following persons guilty of an offence:

- (3) Every person who in any thoroughfare shall .... throw or lay any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish, or throw or cause any such thing to fall into any sewer, pipe, or drain, or into any well, stream or watercourse, pond or reservoir for water, or cause any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill, into any thoroughfare, or any uncovered place, whether or not surrounded by a wall or fence; but it shall not be deemed an offence to lay sand or other materials in any thoroughfare in time of frost to prevent accidents, or litter or other materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things shall cause them to be removed as soon as the occasion for them shall cease;
- (4) Every person who shall empty or begin to empty any privy between the hours of six in the morning and twelve at night, or remove along any thoroughfare any night soil, soap lees, ammoniacal liquor, or other such offensive matter, between the hours of six in the morning and eight in the evening, or who shall at any time use for any such purpose any cart or carriage not having a proper covering or who shall wilfully or carelessly slop or spill any such offensive matter in the removal thereof, or who shall not carefully sweep and clean every place in which any such offensive matter shall have been placed, slopped, or spilled; and, in default of the apprehension of the actual offender, the owner of the cart or carriage employed for any such purpose shall be deemed to be the offender: Provided always, that this enactment shall not be construed to prevent the commissioners for paving and lighting and cleansing the streets of Dublin, within the metropolitan police district aforesaid, or any person acting in their service or by their direction, from emptying or removing along any thoroughfare at any time the contents of any sewer which they are authorized to cleanse or empty.

Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 contain provision similar to subsection (3) above.

5.6 The suggested new offence of depositing any thing on a public road to the interruption of any road-user<sup>8</sup> would cover some situations referred to in these provisions. However, it should be an offence to deposit dung, compost, rubbish or any other offensive matter on a public roadway or footpath, without lawful authority or excuse even if no interruption of any user of the road occurs<sup>9</sup> (maximum penalty: a fine of £100). It should also be an offence, without lawful authority or excuse to allow any filth, dirt, lime or other offensive matter or thing to run or flow onto a public roadway or footpath from any adjoining premises<sup>10</sup> (maximum penalty: a fine of £50).

In so far as deposit of rubbish is concerned, as in the case of building materials, this should be allowable subject to the permission of the road authority.<sup>11</sup>

#### Beating of rugs, etc.

5.7 Section 17(3) of the Dublin Police Act 1842 also prohibits the beating or shaking in any thoroughfare of any carpet, rug, or mat (except door mats before the hour of eight in the morning). Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvements (Ireland) Act 1854 make similar provision. A provision of this kind is not necessary in present-day circumstances.

---

<sup>8</sup> See para. 5.4 above.

<sup>9</sup> See section 148(a) of the English Highways Act 1980.

<sup>10</sup> See ibid., section 161(4).

<sup>11</sup> See para. 5.4 above and section 171 of the English Highways Act 1980.

### Pigsties

5.8 Section 17(5) of the Dublin Police Act 1842 penalises every person who shall keep any pigsty to the front of any street or road in any town within the Dublin metropolitan district, not being shut out from such street or road by a sufficient wall or fence, or who shall keep any swine in or near any street, or in any dwelling, so as to be a common nuisance. Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 contain similar provision. Also, section 57(1) of the Public Health (Ireland) Act 1878 makes it an offence to keep any swine or pigsty in any dwelling-house or so as to be a nuisance<sup>12</sup> to any person. It is considered that an offence of this kind is not required in modern conditions and that the case would be sufficiently met by planning controls on user of property, civil remedies for nuisance and the power under section 54 of the 1878 Act of urban authorities to make bye-laws for inter alia the regulation of the keeping of swine.

### Keeping footways in front of premises swept

5.9 Section 17(6) of the Dublin Police Act 1842 requires every occupier<sup>13</sup> of a house or other tenement in any town within the Dublin Metropolitan district to keep sufficiently swept and cleansed all footways and water-courses adjoining the premises occupied by him. Also, section 54 of the Public Health (Ireland) Act 1878<sup>14</sup> inter alia enables a sanitary authority, where it does not itself undertake or contract for the cleansing of footways and pavements adjoining any premises, to make bye-laws imposing the duty of such cleansing, at such intervals as they think fit, on

---

12 "The word 'nuisance' here is used in the ordinary legal sense, and includes in addition to matters injurious to health, matters substantially offensive to the senses." (per Grove, J. in Banbury Urban Sanitary Authority v Page (1881) 8 Q.B.D. 97, at 98).

13 If any tenement is empty or unoccupied the owner is to be deemed the occupier.

14 41 & 42 Vic., c. 52.

the occupier of any such premises. In modern conditions the cleansing of pavements should be the local authority's function and, while it might be desirable that individual property owners should display sufficient sense of civic duty to undertake the task themselves on occasion when circumstances call for it, it is scarcely appropriate that it should any longer be an offence for them to fail to do so. It is therefore recommended that these provisions of section 54 should be repealed.

#### Leaving openings in streets unfenced

5.10 Section 17(8) of the Dublin Police Act 1842 penalises:

"Every person who, to the danger of passengers in any thoroughfare, shall leave open any vault or cellar, or the entrance from any thoroughfare to any cellar or room underground, without a sufficient fence or hand rail, or leave defective the door, window, or other covering of any vault or cellar, or who shall not sufficiently fence any area, pit, or sewer left open in or adjoining to any thoroughfare, or who shall leave such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto."

Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 contain a similar provision. Section 35(1) of the Public Health Acts Amendment Act 1890<sup>15</sup> requires all vaults, arches and cellars under any street, and all cellar-heads, gratings, lights, and coal holes in the surface of any street, and all landings, flags, or stones of the path or street supporting the same respectively, to be kept in good condition and repair by the owners or occupiers. In the event of default, section 35(2) enables the urban authority, after twenty four hours' notice on that behalf, to cause anything in respect of which such default is made to be repaired or put into good condition and requires the owner or occupier to pay the expenses of so doing to the urban authority.

---

<sup>15</sup> 53 & 54 Vic., c. 59.



5.11 It is suggested that section 35 of the 1890 Act might be replaced by more modern provisions on the lines of sections 179 and 180 of the English Highways Act 1980 which would

- (a) require a person to obtain the consent of the road authority before constructing any cellar etc. under any street or making an opening in any footway as an entrance to a cellar etc. or carrying out any works in a street to provide means for the admission of light or air to premises situated under a street;
- (b) require vaults, cellars etc. under streets and openings, doors, coverings, gratings etc. in the street to be kept in good condition and repair;
- (c) make default on the part of the owner or occupier an offence and enable the road authority to take remedial action in the event of default and recover the expenses of doing so from the owner or occupier.

If provisions along those lines were enacted, it would not be necessary to make it an offence to leave vaults or cellars open, as the matter could be left to civil liability. As far as the making of temporary excavations in a street is concerned, see para. 5.4 above.

### Noise

5.12 Section 14(14) of the Dublin Police Act 1842 makes it an offence to blow any horn or use any other noisy instrument in any thoroughfare or public place for the purpose of calling persons together or of announcing any show or entertainment, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining any money or alms. A more modern provision to similar effect should be enacted making it an offence for any person, for the purpose of hawking, selling, distributing or advertising any article, to use any noisy instrument in any public place in circumstances likely to cause annoyance to other persons (whether in a public place or not) in the neighbourhood. It should also be made an offence to use a loudspeaker in a street to advertise any entertainment, trade or business, or for any purpose between the hours of 10 p.m. on any day and 7 a.m. on the next

day.<sup>16</sup> Certain exceptions (e.g. the operation of a loudspeaker for police, fire brigade or ambulance purposes and the operation of chimes on ice-cream vans) would have to be provided for.<sup>17</sup> The maximum penalty for these offences should be a fine of £200. Finally, it should be an offence to use a loudspeaker on any premises at a volume or in a manner likely to cause annoyance to any person on any other premises or any person using the highway.

#### Dangerous or annoying activities

5.13 Section 14(15) of the Dublin Police Act 1842 makes it an offence to do any of the following acts in any thoroughfare or public place: to wantonly discharge any firearm or throw or discharge any stone or other missile, to the damage or danger of any person, or make any bonfire, or throw or set fire to any fireworks. Section 28 of the Town Police Clauses Act 1847, section 10(2) and (8) of the Summary Jurisdiction (Ireland) Act 1851 and section 72 of the Towns Improvement (Ireland) Act 1854 contain similar provision. Section 61 of the Dangerous Substances Act 1972<sup>18</sup> also makes it an offence to throw or cast any fireworks in or onto, or ignite any fireworks in, any highway, street, thoroughfare or public place. It is suggested that the provisions other than the latter might be replaced by a new provision making it an offence without lawful authority or excuse to light any fire or discharge any stone or other missile on, or within 20 metres of the centre of any public road<sup>19</sup> so that a road-user is injured, interrupted or endangered.<sup>20</sup> The maximum penalty for the offence should be a fine of £500.

5.14 Section 14(17) of the Dublin Police Act 1842 makes it

---

<sup>16</sup> See section 2(1) of the English Noise Abatement Act 1960.

<sup>17</sup> Ibid., section 2(3).

<sup>18</sup> No. 10 of 1972.

<sup>19</sup> See section 10(2) of the Summary Jurisdiction (Ireland) Act 1851.

<sup>20</sup> See section 161(2) of the English Highways Act 1980.

an offence for any person in any thoroughfare or public place to fly any kite or play at any game to the annoyance of the inhabitants or passengers or to make or use any slide upon ice or snow in any street or other thoroughfare, to the common danger of the passengers. Section 28 of the Town Police Clauses Act 1847, section 10(2) of the Summary Jurisdiction (Ireland) Act 1851 and section 72 of the Towns Improvement (Ireland) Act 1854 contain similar provision. These provisions should be replaced by a new offence of playing at any game on a public road which is dangerous or causes substantial inconvenience to a roaduser,<sup>21</sup> the fine for which should not exceed £200.

5.15 Section 72 of the Towns Improvement (Ireland) Act 1854 makes it an offence to do the following in any street to the obstruction, annoyance or danger of the residents or passengers: (i) to fix or place any flower-pot or box or other heavy articles in any window without sufficiently guarding the same against being blown down; (ii) to throw down from the roof or any part of the house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown down so as not to fall on any passenger. Section 28 of the Town Police Clauses Act 1847 contains similar provision and also makes it an offence to order or permit any person in one's service to stand on the sill of any window in order to clean, paint, etc. In present-day conditions these matters ought to be left to be dealt with by civil remedies.

#### Doorbell-ringing, etc.

5.16 Section 14(16) of the Dublin Police Act 1842 provides that every person who in any thoroughfare or public place shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door bell or knocking at any door without lawful excuse, or who shall wilfully and unlawfully extinguish the light of any lamp shall be guilty of an offence. Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 make similar provision. A new offence of this kind is not necessary. Persistent doorbell-ringing or phone-calling with intent to harass, which is calculated to cause a breach of the peace, may be dealt with by way of the procedure for binding a person over to keep the peace and be of good behaviour.

---

<sup>21</sup> Cf. section 161(3) of the English Highways Act 1980.

Chimneys on fire

5.17 Section 30 of the Town Police Clauses Act 1847 provides that every person who wilfully sets or causes to be set on fire any chimney is liable to a penalty not exceeding £5.<sup>22</sup> Under section 31 of the same Act, if any chimney accidentally catches, or is on, fire the person occupying or using the premises in which the chimney is situated is liable to a penalty not exceeding 50p, unless he can prove to the satisfaction of the justice before whom the case is heard that the fire was in nowise owing to the omission, neglect or carelessness of himself or his servant.

5.18 We consider that it should not be an offence to allow one's chimney to catch fire by negligence. Accordingly we recommend the repeal of section 31 of the 1847 Act. Deliberately setting fire to a chimney raises a separate policy issue, however. We consider that, in place of section 30 of that Act, there should be created a special summary offence of deliberately setting fire to a chimney causing, or likely to cause, personal injury or damage to the property of another.

---

<sup>22</sup> Nothing in the section is to exempt a person who set or causes to be set on fire any chimney from liability to be indicted for felony.

CHAPTER 6      OFFENCES OF DRUNKENNESS

Present Law

6.1 Section 15 of the Dublin Police Act 1842 provides that every person who shall be found drunk in any street or public thoroughfare within the police district, and who while drunk shall be guilty of any riotous or indecent behaviour, and also every person who shall be guilty of any violent or indecent behaviour in any police station house shall be guilty of an offence and liable to a fine not exceeding two pounds or imprisonment for not more than seven days. Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 make it an offence similarly punishable to be drunk in any street or guilty of any riotous or indecent behaviour in any street, police office, or petty sessions court or any police station-house.

6.2 There are a number of other provisions that penalise either simple drunkenness, or drunkenness in particular circumstances, in public places.

- (1) Section 12 of the Licensing (Ireland) Act 1836<sup>1</sup> makes it an offence to be found drunk in any street, square, lane, roadway or other public thoroughfare or place. The maximum penalty is a fine of 50p.

Another offence of simple drunkenness is provided for by section 12 of the Licensing Act 1872,<sup>2</sup> whereby every person found drunk in any highway or other public place, whether a building or not, or in a licensed premises, is liable on summary conviction for a first offence to a fine not exceeding £1, for a second conviction within twelve months to a fine not exceeding £2 and for a third or subsequent conviction within twelve months to a fine not exceeding £4.

---

<sup>1</sup> 6 & 7 Wm. 4, c. 38.

<sup>2</sup> 35 & 36 Vic., c. 94.

- (2) Under section 25 of the Licensing Act (Ireland) 1874<sup>3</sup> a person so drunk on any highway or public place whether a building or not as to be incapable of taking care of himself may be detained by a constable until he can with safety to himself be discharged. Also, section 59 of the Road Traffic Act 1968 makes it an offence for a person to be found in a public place in such a condition because he is under the influence of intoxicating liquor or a drug as to be a source of danger to traffic or to himself. The maximum penalty for this offence is a fine not exceeding £150 for a first offence and not exceeding £350 for a second or subsequent offence.<sup>4</sup>
- (3) Section 7 of the Summary Jurisdiction (Ireland) Act 1908<sup>5</sup> makes it an offence for a person, being drunk while in charge of any person, to endanger the life or limb of any person. Section 9 of the same Act makes it an offence to be found drunk in any place, whether a building or not, to which the public have access, whether on payment or not, or on any licensed premises, while in charge of a child under the age of seven years. The maximum penalty for both offences is a fine of £2 or imprisonment for one month.
- (4) Under section 7 of the 1908 act it is also an offence for a person, being drunk while in charge of any animal or vehicle of whatever description and by whatever kind of power it may be driven or propelled, or in the possession of any loaded firearm or of any instrument, tool, or article which unless managed with due care would become a source of danger to the person or persons in whose presence it might be used, carried, or placed, to endanger the life or limb of any person. The maximum penalty is a fine of £2 or one month's imprisonment. Also, section 12 of the Licensing Act 1872 provides that every person who is drunk

---

<sup>3</sup> 37 & 38 Vic., c. 69.

<sup>4</sup> See section 102 of the Road Traffic Act 1961 (general penalty), as amended by section 2 of the Road Traffic (Amendment) Act 1984.

<sup>5</sup> 8 Ed. 7, c. 24.

while in charge, on any highway, or other place, of any carriage, horse, cattle or steam-engine or who is drunk while in possession of any loaded firearms is guilty of an offence. The maximum penalty is a fine of £4 or one month's imprisonment. The Road Traffic Acts 1961 to 1973 now regulate driving of mechanically propelled vehicles while under the influence of intoxicating liquor or a drug or while having in one's body in excess of a specified quantity of alcohol. Section 51 of the 1961 Act, as amended by section 48 of the 1961 Act, also makes it an offence to drive an animal-drawn vehicle or a pedal cycle while under the influence of intoxicating liquor or a drug (maximum penalty: a fine of £20 and/or one month's imprisonment in the case of a first offence involving an animal-drawn vehicle and, in the case of a second or subsequent such offence or an offence involving a pedal cycle, a fine of £50 and/or three months' imprisonment).

- (5) Under section 12 of the Licensing Act 1872 every person who, in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour is guilty of an offence and liable to a maximum penalty of a fine of £4 or one month's imprisonment.
- (6) Under section 15 of the 1872 Act any drunken person who upon being requested by a licensed person, or his servant or agent, or a constable to quit licensed premises, refuses or fails to do so is liable to a penalty not exceeding £10.

6.3 In a submission to the Commission on 28 September 1983 the Simon Community pointed out that under section 12 of the Licensing Act 1872 a person can be convicted of being drunk in public and argued as follows:

"This discriminates - unintentionally perhaps in this case - against homeless people who cannot by definition get drunk in private. It should also be remembered that homeless people sleeping rough will often take drink in order to stay warm at night.

We feel there are good grounds for re-examining the desirability of this law. Regular drinkers, particularly heavy regular drinkers, are basically people in need of social and medical attention and

detoxification, rather than criminal prosecution. The absence of detoxification facilities is something that Simon has highlighted for some time. Again, we feel there should not be criminal solutions for medical problems."

The submission went on to argue that keeping someone in prison for a minor offence is costly and ineffective and that repeatedly imprisoning them for drunk and disorderly behaviour, particularly if they are alcoholics, is a waste of people's lives and of public money.

#### Policy arguments on reform of the law

6.4 The first point to be considered is whether simple drunkenness in a public place, unaccompanied by any other "aggravating" circumstances, should continue to be an offence. It may be argued that the mere sight of a person in a drunken state in a public place is a source of annoyance, and possibly disgust, to others and may be disturbing to children. Also, it might be said that "aggravating" circumstances are so likely to result imminently from the very presence of a drunken person in a public place that there is considerable justification for the law intervening before the stage is reached where these circumstances occur. As against this, it can be said that simple drunkenness in public is a relatively harmless form of conduct, that it often occurs without any accompanying disorderliness or serious risk of injury to the drunken person himself or others, and that it is inappropriate for the criminal law to intervene unless such accompanying circumstances exist. A further consideration is that drunkenness in public is often a manifestation of a health problem and the intervention of the criminal law would be unhelpful and unjustified in the absence of disorderliness etc. The Law Reform Commission considers that mere drunkenness in a public place without disorderliness or attendant circumstances involving risk of injury to the drunken person himself or others should be decriminalised.

6.5 A more difficult question is whether it should be an offence for a person to be drunk in a public place in circumstances where he is a nuisance to others or a danger to himself or others. There can be no doubt that in such circumstances it will often be desirable for the drunken person's own sake that he should be removed to safer surroundings. If he has a home to go to and the police



take him or arrange for him to be taken there, and he co-operates with them, the problem should be capable of being dealt with without the need for arrest and charge. However, this approach will not work if he refuses to co-operate or if he has no home to go to. This problem was considered in New Zealand by the Statutes Revision Committee<sup>6</sup> and its proposals on the matter deserve extended quotation:

"Here most witnesses considered that the best solution would be for the Police to be able to remove the person to some kind of detoxication centre where he could remain for the period of his incapacity. The committee notes that in the United States the President's Commission on Law Enforcement and Administration of Justice recommended in 1967 that drunkenness should not in itself be a criminal offence and that communities should establish detoxication units as part of comprehensive treatment programmes for alcoholics. The committee understands that some States in that country have already taken action along these lines. This sort of approach appeals strongly to the committee as being more humane and sensible than the present law, quite apart from the saving of time and resources of both the Police and the courts that decriminalisation would achieve. Arguments about deterrence and rehabilitation are virtually meaningless in this context. When the person charged is an alcoholic, there is clearly no question of the present law having a deterrent effect. With the casual drunk, the prospect of a deterrent effect in a society where alcohol is widely accepted and freely used seems very slender. The prospect of rehabilitating a person with drinking problems by means of a fine or brief prison term seems equally remote.

In the committee's view, what is needed in any new legislation is not an offence of public drunkenness but a power for the Police to take into temporary custody any person found drunk in a public place. Where a person has a home to go to and will co-operate with the Police in allowing himself to be taken or sent home there should normally be no need for this power to be exercised. In other cases it can be used to convey an unco-operative or incapacitated person to his home or to some suitable place where he can regain his faculties.

---

<sup>6</sup> Report on Police Offences Act 1927 (1974), pp. 22-23.

At present, persons arrested for drunkenness are taken to the Police cells and this practice would no doubt have to continue under any new scheme, at any rate in the smaller centres. We were, however, impressed by the view of several witnesses that detoxication centres, perhaps staffed and run by voluntary organisations, should be available for this purpose if full recognition is to be given to the problem as a social welfare rather than a criminal problem. If our main recommendation is adopted, we think the Government might well give consideration to the possibility of making financial assistance available to welfare agencies prepared to acquire and run premises in the larger city centres where drunk persons picked up by the Police could be given shelter until they are fit to leave. The licensed trade might also reasonably be asked to contribute. Elaborate and expensive facilities would certainly not be necessary and we do not envisage that the cost of such assistance would be very great. We should make it clear that these centres would not have the function of providing a home for alcoholic vagrants. They would, however, be a useful point from which such people and others with serious drinking problems could be referred on to other agencies able to offer more long-term help.

This committee is aware that to permit the Police to exercise custodial powers over a person in respect of conduct which is not a criminal offence and which does not therefore involve a formal charge and subsequent court appearance is somewhat novel. Objections that such a power may be open to abuse can readily be foreseen. The committee concedes that objections of this nature must be taken into account when a detailed draft is prepared and that safeguards will need to be incorporated. For example, the maximum possible period of detention of a drunk person in the Police cells should not exceed 12 hours from the time when he was found in a drunken condition. A further suggestion was that the person held in custody should have the right to ask to be taken before the court which would then investigate the action taken by the Police. The committee is, however, firmly of the view that considerations of this nature do not constitute a justification of retaining an offence of public drunkenness. It is content to see difficulties on matters of detail thrashed out at the point when a draft Bill is under discussion."<sup>7</sup>

---

<sup>7</sup> *Ibid.*, pp. 22-23.

This proposal was implemented in the Summary Offences Act 1981<sup>8</sup> which included the following provision:<sup>9</sup>

"Any constable who finds any person intoxicated in any public place -

- (a) May take or cause that person to be taken to his usual place of residence or, if he is temporarily residing elsewhere, to his temporary place of residence; or
- (b) If that place cannot reasonably be ascertained or it is not reasonably practicable to take that person to it or it may not be safe to leave him there, may take that person or cause him to be taken to any temporary shelter or detoxification centre; or
- (c) If neither the course authorised by paragraph (a) nor that authorised by paragraph (b) of this subsection is reasonably practicable, detain or cause that person to be detained in a police station for any period not exceeding 12 hours."

The full text of the New Zealand section is set out in the Appendix to this Report.

6.6. The approach taken in the New Zealand legislation has considerable attractions as a potentially more humane solution to the problem of, say, the alcoholic vagrant. However, such an approach would entail some serious difficulties. In the first place, the provision of detoxification and other therapeutic facilities suitable for homeless persons would be likely to take some considerable time and would have substantial cost implications. Secondly, the possibility of detention of drunken persons in a police station for up to twelve hours, without there even being any question of a charge of a criminal offence involved, would be a questionable interference with personal liberty and might be questionable even on constitutional grounds. The possibility of taking a person found drunk in a public place to his home or to a detoxification centre

---

<sup>8</sup> Inserting a new section 37A in the Alcoholism and Drug Addiction Act 1966.

<sup>9</sup> Section 37A(2) of the 1966 Act, as so inserted.

would be open to the Gardai in any event if the person consented. If he did not consent, it would be preferable that any deprivation of his liberty should be only with a view to a formal charge and that any subsequent disposal of the matter should be done by a judicial authority. If detoxification facilities were available the trial judge could then seek the defendant's agreement to undergo treatment and, possibly, suspend sentence on condition that he do so. Provision of such facilities on the lines recommended in the New Zealand report would certainly be desirable in order to enable resort to this course as frequently as possible and also to enable the Gardai to endeavour to get persons found drunk to agree to go to those facilities in the first place without arrest and charge.

6.7 The conclusion, therefore, is that, while mere drunkenness in public should not continue to be an offence, there should be some specified circumstances in which drunkenness in a public place should be an ingredient of an offence. All circumstances in which a drunken person would be a source of danger to traffic or himself in any street, road or other place to which the public have access with vehicles are covered by the provisions of the Road Traffic Acts. However, those Acts do not cover other public places or situations of a non-traffic nature where danger is caused to other persons. A new provision should be enacted making it an offence to be found in a public place in such a condition, because one is under the influence of intoxicating liquor, or a drug, as to be a source of danger to another person or oneself. The American Law Institute's Model Penal Code contains a provision of this nature but it is rather wider in scope. It provides<sup>10</sup> that a person is guilty of an offence if he appears in any public place "manifestly under the influence of alcohol, narcotics or other drug not therapeutically administered, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity". Reference to danger to property and to annoying other persons should not be included in the definition of the offence proposed above because this would unduly widen its scope. "Public place" should be defined as meaning any place (including a street or road or a building) to which the public have access at the material time, whether on payment or otherwise.

6.8 Should the sanction of imprisonment be available in respect of the proposed new offence? In England section 91

---

<sup>10</sup> Art. 250.5.

of the Criminal Justice Act 1967 provided for the removal of imprisonment as a sanction for the offence of being guilty, while drunk, of disorderly behaviour in a public place. However, an order appointing a day for the coming into force of the provision was not to be made unless the Secretary of State was satisfied that sufficient suitable accommodation was available for the care and treatment of persons convicted of being drunk and disorderly. The rationale of this approach was that "while prison is clearly not the most appropriate place in which to treat the habitual drunken offender, it is important that changes in the law that would have the effect of curtailing the power of the courts to sentence such offenders to imprisonment should not be introduced until suitable alternatives are available"<sup>11</sup> - the "suitable alternatives" in question being therapeutic hostels and other community facilities.

6.9 The Law Reform Commission considers that the penalty of imprisonment should not be available for the new offence proposed above of being drunk in a public place so as to be a source of danger to oneself or another. It agrees with the Simon Community's views on the need for provision of detoxification and other therapeutic facilities so that homeless persons who are habitual drunkards can receive medical treatment for their condition, rather than disposition by way of prison sentence. The availability of a fine, coupled with the courts' powers to bind over on condition that an offender receive treatment, should be sufficient. The Commission does not consider that the removal of imprisonment for this offence should be made dependent on the provision of suitable accommodation and treatment facilities, as was done in the English Act of 1967. Such an approach would carry with it the risk that the abolition of imprisonment for the offence would be postponed indefinitely. The maximum penalty for the proposed new offence should be a fine of £200.

6.10 This leaves the question of riotous or disorderly conduct while drunk in a public place. In the next chapter the question of disorderly conduct in a public place, quite apart from any question of drunkenness, is considered and a new offence of disorderly conduct proposed.<sup>12</sup> It might be argued that, notwithstanding the creation of this proposed

---

<sup>11</sup> Home Office Working Party on Habitual Drunken Offenders, Report (1971), para. 3.14.

<sup>12</sup> See para. 7.7 below.

new offence, a specific offence of disorderly conduct accompanied by drunkenness would still be desirable in order to reflect a lesser degree of culpability on the part of an offender whose responsibility for his action was diminished by intoxication. However, drunkenness can be an accompanying factor in relation to all kinds of offences and there would be a certain over-refinement about drawing a distinction between two grades of a summary offence such as disorderly conduct depending on whether drunkenness was present or not. Besides, the new offence of disorderly conduct proposed later is a very minor offence in any event. It is considered, therefore, that a specific "drunk and disorderly" offence would not be necessary.

## CHAPTER 7      INSULTING BEHAVIOUR AND DISORDERLY CONDUCT

Present Law

7.1 Section 14(13) of the Dublin Police Act 1842 provides that every person who within the limit of the metropolitan district in any thoroughfare or public place shall use any threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, shall be guilty of an offence and liable to a fine not exceeding £2. Section 8 of the Summary Jurisdiction (Ireland) Amendment Act 1871<sup>1</sup> provides that any person who within the limits of the police district of Dublin metropolis shall in any theatre or other place of public amusement be guilty of offensive or riotous behaviour, to the disturbance or annoyance of any persons present, shall on conviction be liable to a fine not exceeding £2 or to imprisonment for any period not exceeding one month. Also, section 1 of the Public Meeting Act 1908<sup>2</sup> provides that any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, or who incites others to do so, shall be guilty of an offence (maximum penalty a fine of £5 or one month's imprisonment).

7.2 In Dalton v White,<sup>3</sup> where D distributed to passers by in the street near his former place of employment handbills containing provocative references to such employment, it was held that he might be guilty of "insulting behaviour" within section 14(13) of 842 Act, as "insulting behaviour" was not limited to spoken words. Smith and Hogan<sup>4</sup> comment as follows on the actus reus required for the offence under section 5 of the English Public Order Act 1936 which corresponds to section 14(13):-

---

1 34 & 35 Vic., c. 76.

2 8 Edw. 7, c. 66.

3 (1914) 48 I.L.T.R. 149.

4 Criminal Law (5th ed., 1983), pp. 742-743.

"The words, 'threatening, abusive or insulting', are to be taken in their ordinary meaning. It is not helpful to seek to explain them by the use of synonyms or dictionary definitions.

'... an ordinary sensible man knows an insult when he sees or hears it.'<sup>5</sup>

Whether particular conduct is threatening, etc., is a question of fact. In Brutus v Cozens<sup>6</sup> D interrupted a tennis match to protest against apartheid and thereby angered the spectators. The finding of the magistrates that this was not 'insulting' behaviour could not be disturbed, because it was a not unreasonable finding. If they had decided it was insulting, it may be that their decision would have been equally beyond challenge<sup>7</sup> though Lord Reid, obiter, agreed with the finding .... To encourage an existing disturbance may be to occasion a breach of the peace because each act of violence is capable of being a separate breach.<sup>8</sup> The act of fighting may constitute the offence since it occasions violence in reply."<sup>9</sup>

7.3 The mens rea required for the offence is now the subject of some uncertainty in English law. Smith and Hogan until recently summarised the position as follows:

"D must have intended to use the words or behaviour he did use. There can be no problem about that. He must also, it is submitted, have intended the words to be threatening, abusive or insulting to the audience, or been reckless whether they were so."<sup>10</sup>

---

<sup>5</sup> Brutus v Cozens [1972] 2 All E.R. 1297 at 1300, per Lord Reid.

<sup>6</sup> Supra. See also Arrowsmith [1975] All E.R. 463 at 467; Hudson v Chief Constable, Avon and Somerset Constabulary [1976] Crim. L. R. 451; Simcock v Rhodes [1977] Crim. L. R. 751.

<sup>7</sup> Per Lord Kilbrandon at 1303.

<sup>8</sup> Gedde [1978] Crim. L. R. 167.

<sup>9</sup> Oakwell [1978] 1 All E.R. 1223.

<sup>10</sup> Criminal Law (4th ed., 1978), pp. 761-762.



However in Parkin v Norman<sup>11</sup> it was held that threats, abuse and insults are within the offence whether or not they are intended to be threats, abuse or insults - what is required is conduct of a threatening, abusive or insulting character and no intent to insult etc. need be proved. There is no reference in the decision to whether recklessness (in the sense of advertence on the accused's part to the possibility that his conduct might insult etc.) is necessary and presumably the Court considered that it is not.<sup>12</sup>

7.4 As well as being threatening, abusive or insulting, the accused's behaviour must be either intended to provoke a breach of the peace or likely to do so. Smith and Hogan<sup>13</sup> comment:

"Naturally the prosecution generally rely on the second alternative which is so much easier to prove; but 'likely' must not be read as 'liable' and the mere possibility of a breach of the peace is not enough.<sup>14</sup> Where D's conduct is threatening, etc., he takes his audience as he finds it and if some of them are hooligans bent on preventing him from speaking, a breach of the peace is likely.<sup>15</sup> D is not entitled to assume that his audience consists of reasonable men. It is not settled whether the words must be likely to cause a breach of the peace immediately or whether it is sufficient that they are likely to do so on some future occasion<sup>16</sup> - as where an insult to a little girl is likely to fetch an angry father to the scene. The courts have stressed on more than one occasion that the section should not be used in respect of such trivial incidents."<sup>17</sup>

---

<sup>11</sup> [1982] 2 All E.R. 583.

<sup>12</sup> See Smith and Hogan, op. cit., (5th ed., 1983), p. 743.

<sup>13</sup> Ibid., p. 744.

<sup>14</sup> Parkin v Norman [1982] 2 All E.R. 583 at 589.

<sup>15</sup> Jordan v Burgoyne [1963] 2 All E.R. 225; Williams v Director of Public Prosecutions [1968] Crim. L. R. 563.

<sup>16</sup> Ambrose (1973) 57 Cr. App. Rep. 358.

<sup>17</sup> Ambrose, above; Venna [1975] 3 All E.R. 788 at 790; Parkin v Norman, [1982] 2 All E.R. 583 at 591.

7.5 What exactly constitutes a breach of the peace? Historically the concept has lacked an authoritative definition.<sup>18</sup> In Attorney-General v Cunningham<sup>19</sup> O'Byrne, J. in the Court of Criminal Appeal said that in order to constitute a breach of the peace "an act must be such as to cause reasonable alarm and apprehension to members of the public" and that "this is the substantial element of the offence". In the recent case of R. v Howell the English Court of Appeal held (in the context of arrest for breach of the peace) that there cannot be a breach of the peace:

"unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done. There is nothing more likely to arouse resentment and anger in him, and a desire to take instant revenge, than attacks or threatened attacks upon a person's body or property."<sup>20</sup>

The Court thought that the kinds of behaviour covered by the concept "breach of the peace" had to be related to violence and that the word "disturbance" when used in isolation could not constitute a breach of the peace. This definition was adopted in Valentine v Lilley<sup>21</sup> in relation to the offence under discussion here.

7.6 The creation of a breach of the peace does not in itself appear to be a crime<sup>22</sup> under English law. In Attorney-General v Cunningham<sup>23</sup> the Court of Criminal Appeal was satisfied that it is an indictable offence at common law and the Constitution appears to recognise that such an offence exists: cf. Article 15.13. It is an offence in

---

<sup>18</sup> See Glanville Williams, "Arrest for Breach of the Peace" [1954] Crim. L. R. 578 and Criminal Law: The General Part (2nd ed., 1961), pp. 714-5.

<sup>19</sup> [1932] I.R. 28 at 33.

<sup>20</sup> [1981] 3 All E.R. 383 at 389.

<sup>21</sup> [1982] 2 All E.R. 583 at 590.

<sup>22</sup> See Glanville Williams, [1954] Crim. L. R. 578 at 583.

<sup>23</sup> Fn. 19 above.

Scotland also.<sup>24</sup> There is a power of arrest without warrant for breach of the peace and a court may bind a person over (either following his conviction for some offence or otherwise) - i.e. order him to enter into a recognisance to (i) keep the peace or (ii) be of good behaviour, or both.

Policy arguments on reform of the law

7.7 A new provision similar to section 14(13) of the Dublin Police Act 1842 should be enacted, which would apply throughout the State. The wording used in section 14(13) has stood the test of time well and should be retained. However, the application of the provision to written words, as well as spoken, should be made explicit.<sup>25</sup> The new provision would, then, be to the effect that, where a person in a public place

- (a) uses or engages in any threatening, abusive or insulting words or behaviour, or
- (b) distributes or displays any writing, sign or visible representation which is threatening, abusive or insulting,

with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, he shall be guilty of an offence. Section 58(1) of the proposed Criminal Justice Bill 1967 contained provision to this effect. "Public place" should be defined as including any public road and any premises or place to which at the material time the public have access, whether as of right or by permission and whether subject to or free of charge.<sup>26</sup> The maximum penalty for this offence should be a fine of £400 and/or six months' imprisonment.

---

<sup>24</sup> See Gordon, Criminal Law of Scotland (2nd ed., 1978), pp. 985-990.

<sup>25</sup> See section 5 of the English Public Order Act 1936.

<sup>26</sup> See clause 2 of the Criminal Justice Bill 1967 and section 9(1) of the English Public Order Act 1936, as substituted by section 33 of the Criminal Justice Act 1972.

7.8 It should be noted that this proposed new provision, like section 14(13) of the Dublin Police Act 1842, does not make disorderly conduct per se an offence. The conduct must be threatening, abusive or insulting in nature and must either be engaged in with intent to provoke a breach of the peace or be such that a breach of the peace is likely to be occasioned by it. As was mentioned in the last chapter, disorderly behaviour in a public place while drunk is also an offence.<sup>27</sup> A wide range of disorderly conduct in public places falls outside the scope of these offences. At least some manifestations of such conduct should be the subject matter of an offence carrying a less severe penalty than the "threats, abuse or insults" offence. For example, if a group of people behave in a rowdy and noisy fashion late at night in a residential area, reckless as to whether they are going to disturb people's sleep, it is difficult to see why the law should not penalise this behaviour in the same way as it penalises the blowing of car-horns in a built-up area at night.<sup>28</sup> One possible alternative would be to have a general offence of behaving in a disorderly manner in a public place.<sup>29</sup> This would have the advantages that the concept of disorderly conduct is already known to the law in the context of the "drunk and disorderly" offence and that all kinds of disorderly conduct would be covered. However, such an offence would be very open-ended and would be capable of covering all kinds of non-conforming behaviour in public, even where there was no real threat to public order. This objection could probably be levelled to some extent at any offence of the kind under discussion here but a more specific type of offence, aimed at particular kinds of disorderly conduct, which would not carry a severe maximum penalty, would be less objectionable. Some such offence is necessary to control misbehaviour in public which, while it might not pose a serious threat to public order, would nevertheless be likely to cause substantial annoyance to others. Clause 58(2) of the Criminal Justice Bill 1967 proposed to provide that, where a person in a public place, between the hours of 10 p.m. on any day and 7 a.m. on the next day, or, having been warned by a member of the Garda

---

<sup>27</sup> See para. 6.1 above.

<sup>28</sup> See Article 86 of the Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963 (S.I. No. 190 of 1963).

<sup>29</sup> Section 4(1)(a) of the New Zealand Summary Offences Act 1981 makes guilty of an offence every person who "in or within view of any public place, behaves in an offensive or disorderly manner."

Siochana to desist, at any other time, engaged in any shouting, singing or boisterous conduct in circumstances likely to cause annoyance to other persons (whether in a public place or not) in the neighbourhood, he should be guilty of an offence. The Law Reform Commission considers that a new offence to this effect should be introduced and that the appropriate penalty would be a fine not exceeding £500.

7.9 If offences of the kind proposed in the preceding two paragraphs are provided for, it should not be necessary to retain the common law offence of breach of the peace and it should be abolished.

7.10 Section 1 of the Public Meeting Act 1908 should be replaced by a new provision making it an offence for any person at a public meeting to act in a disorderly manner for the purpose of preventing the transaction of the business of the meeting. The maximum penalty for the offence should be a fine of £100 and/or one month's imprisonment.

7.11 Section 8 of the Summary Jurisdiction (Ireland) Amendment Act 1871 relating to offensive or riotous behaviour in theatres and other places of public amusement should be repealed without replacement.

## CHAPTER 8 OFFENCES RELATING TO ANIMALS

Offences of cruelty

8.1 Section 8 of the Dublin Police Act 1842 provides that every person who shall keep or use or act in the management of any house, room, pit or other place within the police district for the purpose of fighting or baiting lions, bears, badgers, cocks, dogs or other animals shall be liable to a penalty of not more than £5 or imprisonment for not more than one month. A similar offence is provided for in section 36 of the Town Police Clauses Act 1847 and section 75 of the Towns Improvement (Ireland) Act 1854. Also, section 1(1)(c) of the Protection of Animals Act 1911,<sup>1</sup> as amended by section 4 of the Protection of Animals (Amendment) Act 1965,<sup>2</sup> provides that if any person:

"shall cause, procure, or assist at the fighting or baiting of any animal; or shall keep, use, manage, or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or shall permit any premises or place to be so kept, managed, or used, or shall receive, or cause or procure any person to receive, money for the admission of any person to such premises or place"

such person shall be guilty of an offence of cruelty within the meaning of the Act and shall be liable on summary conviction to a fine not exceeding £10 and/or imprisonment for any term not exceeding three months for a first or second offence and fine not exceeding £50 and/or imprisonment for a term not exceeding six months for a third or subsequent offence.

8.2 The earlier provisions are not necessary in view of the existence of section 1(1)(c) of the 1911 Act and should be repealed without replacement. The fines under this provision should be raised to £50 and £200, respectively.

---

<sup>1</sup> 1 & 2 Geo. 5, c. 27.

<sup>2</sup> No. 10 of 1965.

**Dangerous dogs**

8.3 Section 14(2) of the Dublin Police Act 1842 provides that every person who within the police district, in any thoroughfare or public place shall turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse or other animal shall be guilty of an offence and liable to a fine not exceeding £2. Section 28 of the Town Police Clauses Act 1847, section 10(1) of the Summary Jurisdiction (Ireland) Act 1851 (as amended by section 4(4) of the Animals Act 1985) and section 72 of the Towns Improvement (Ireland) Act 1854 make similar provision. In Ross v Evans<sup>3</sup> it was held that a dog was "at large" where a person had no physical control of it at all and not where a person could exercise control over it by means of a lead but did not do so.

8.4 Section 10(7) of the Summary Jurisdiction (Ireland) Act 1851 also makes it an offence to keep or suffer to be at large within fifty yards of any public road any dog without having it muzzled, or without having a block of wood fastened to its neck of sufficient weight to prevent it from being dangerous. Any constable may, pursuant to a warrant from a justice, seize or kill any dangerous dog so kept near any public road. This offence does not apply to the case of a dog on a public road<sup>4</sup> and applies to dangerous dogs only.<sup>5</sup> There are also provisions in relation to rabid dogs. Section 15<sup>6</sup> of the Dublin Police Act 1839,<sup>7</sup> section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 make it an offence to suffer any dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state, and section 18 of the 1839 Act enables any constable of the DMP

---

<sup>3</sup> [1959] 2 All E.R. 222.

<sup>4</sup> Devaney v Field [1915] 2 I.R. 180, per Cherry, L.C.J., and Molony, J.

<sup>5</sup> Ibid., per Madden, J.

<sup>6</sup> The offence under section 15 of the 1839 Act relates to other animals as well.

<sup>7</sup> 2 & 3 Vic., c. 78.

to destroy such a dog. Section 28 of the 1847 Act and section 72 of the 1854 Act also make it an offence, after public notice given by any justice etc. directing dogs to be confined on account of suspicion of canine madness, to suffer any dog to be at large during the time specified in such notice.

8.5 Section 2 of the Dogs Act 1871<sup>8</sup> enables any court of summary jurisdiction to take cognizance of a complaint that a dog is dangerous, and not kept under proper control, and, if it appears to the court that such dog is dangerous, it may make an order directing the dog to be kept under control or destroyed. Any person failing to comply with such an order is liable to a penalty not exceeding £1 for every day during which he so fails. "Dangerous" does not mean only "dangerous to mankind" - the fact that a dog has attacked and killed sheep is evidence of its being "dangerous" under the section.<sup>9</sup> A dog may be dangerous under the provision even though it has been held,<sup>10</sup> not to be ferocious.<sup>11</sup> The wording of the opening part of section 2 shows that the proceeding envisaged is an administrative process involving no question of any offence or penalty.<sup>12</sup>

8.6 The provisions in relation to rabid dogs may be repealed without replacement. Rabies is now regulated by the Diseases of Animals Act 1966.<sup>13</sup> Is some offence of failure to control dangerous dogs in public places required or would the administrative procedure under section 2 of the Dogs Act 1871, together with civil liability,<sup>14</sup> sufficiently

---

<sup>8</sup> 34 & 35 Vic., c. 56.

<sup>9</sup> Williams v Richards [1907] 2 K.B. 88.

<sup>10</sup> In proceedings under section 54 of the Metropolitan Police Act 1839 which is the same as section 14(2) of the Dublin Police Act 1842 - para. 8.3 above.

<sup>11</sup> Kedde v Payn [1964] 1 All E.R. 189.

<sup>12</sup> R v Nottingham JJ., ex parte Brown [1960] 3 All E.R. 625.

<sup>13</sup> No. 6 of 1966.

<sup>14</sup> Recently extended by section 3 of the Animals Act 1985, giving effect to a recommendation of the Law Reform Commission in its Report on Civil Liability for Animals, para. 1.5 (LRC 2-1982).



cover the problem? Such behaviour involves sufficient risk of personal injury to members of the public and is sufficiently culpable to warrant its constituting an offence. It is suggested therefore that the existing provisions should be replaced by a new one making it an offence, in a public place (i) to allow any dangerous dog to be at large, or (ii) to fail to exercise proper control over such a dog, or (iii) to set on or urge any dog to attack or worry any person or animal. The maximum penalty for this offence should be a fine of £500.

**CHAPTER 9 MISCELLANEOUS OFFENCES**

Offences by owners of licensed premises

9.1 Section 7 of the Dublin Police Act 1842 makes it an offence for any person who keeps any house, shop, room, or place of public resort within the Dublin police district in which provisions, liquors, or refreshments of any kind are sold or consumed, to

- (i) wilfully or knowingly permit drunkenness or other disorderly conduct in such house, etc., or
- (ii) knowingly suffer any unlawful games or any gaming whatsoever therein, or
- (iii) knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together and remain therein.

The maximum penalty is a fine of £5.

9.2 This provision is no longer necessary in view of subsequent legislative provisions.

- (i) Section 13 of the Licensing Act 1872 makes it an offence for a licensed trader to permit drunkenness or any violent, quarrelsome or riotous conduct to take place or to sell any intoxicating liquor to any drunken person (maximum penalty: a fine of £10 for a first offence, £20 for a second and subsequent offence).
- (ii) Section 14 of the 1872 Act makes it an offence for a licensed person knowingly to permit his premises to be the habitual resort or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, if he allows them to remain therein longer than is necessary for the purpose of refreshment (maximum penalty: same as at (i)).

(iii) Gaming on licensed premises is now regulated by section 9 of the Gaming and Lotteries Act 1956.<sup>1</sup>

The maximum penalties under sections 13 and 14 of the 1872 Act are in need of review. It is understood that they are being considered as part of a general review of intoxicating liquor legislation which is being undertaken by the Department of Justice and accordingly it is not proposed to make any recommendations on the matter here.<sup>2</sup> Section 7 of the 1842 Act may be repealed without replacement.

9.3 Sections 16-19 of the Dublin Justices Act 1824 provide for offences related to tippling or gaming by apprentices etc., in a licensed house during prohibited hours. These provisions have either been superseded by later provisions of the Licensing Act or are antiquated. They may be repealed without being replaced.

#### Keeping a gaming house

9.4 Under section 9 of the Dublin Police Act 1842 the owner or keeper or other person having the management of any house or room within the police district which is kept or used as a common gaming house, and also every banker, croupier or other person who acts in any manner in conducting such gaming house, is liable to a penalty not exceeding £100 or to imprisonment for a period not exceeding six months. Also every person found in such premises without lawful excuse is liable to a penalty not exceeding £5. Section 9 also provides for powers of entry, search, seizure and arrest. Section 10 of the 1842 Act provides that in a prosecution for an offence under section 9 it shall not be necessary to prove that any person found playing at any game was playing for any money, wager, or stake.

---

<sup>1</sup> Section 16 was repealed in part by the Statute Law Revision (No.2) Act 1878.

<sup>2</sup> On this account we would not wish to be understood as taking any position on the question whether section 14 is consistent with the Constitution: cf. our Report on Vagrancy and Related Offences, ch. 4 (LRC 11-1985).

9.5 These provisions are now superfluous in view of the Gaming and Lotteries Act 1956. Use of places for unlawful gaming is now prohibited by section 5 of that Act, powers of entry, search, seizure and arrest are provided for by sections 37-40 and sections 42-43 make provision in relation to evidence of keeping a place for unlawful gaming and evidence of unlawful gaming.

#### Non-attendance etc. of witnesses

9.6 Section 26 of the Dublin Justices Act 1824 provides for an offence of failure to attend and give evidence on the part of duly summonsed witnesses. The compulsion of witnesses to attend and give evidence is now provided for by section 13 of the Petty Sessions (Ireland) Act 1851<sup>3</sup> and the jurisdiction in respect of it is now vested in the District Court by virtue of section 77 of the Courts of Justice Act 1924<sup>4</sup> and section 33 of the Courts (Supplemental Provisions) Act 1961.<sup>5</sup> The offence under section 26 of the 1824 Act may therefore be repealed without replacement. (The repeal of the whole 1824 Act was proposed in the Criminal Justice Bill 1967.)

#### False oaths and compounding informations

9.7 Section 124 of the Dublin Police Magistrates Act 1808 makes it an offence for any person taking any oath in pursuance of that Act to swear falsely. This provision is redundant in view of the existence of the common law misdemeanour of perjury and may be repealed without replacement. The repeal of the whole 1808 Act was proposed in the Criminal Justice Bill 1967 and might now be carried through. Section 61 of the Dublin Police Act 1842 provides for an offence of compounding, delaying or withdrawing any information as to an offence, for reward. This section should be repealed without replacement and the matter should

---

<sup>3</sup> 14 & 15 Vic., c. 93.

<sup>4</sup> No. 10 of 1924.

<sup>5</sup> No. 39 of 1961.

be left to be dealt with by way of the common law misdemeanour of perverting the course of justice.

Flyposting, graffiti, etc.

9.8 Section 14(10) of the Dublin Police Act 1842 makes guilty of an offence every person who, without the consent of the owner or occupier, shall affix any posting bill or other paper against or upon any building, wall, fence or pole, or write upon, soil, deface, or mark any such building, wall, fence, or pole with chalk or paint, or in any other way whatsoever, or wilfully break, destroy or damage any part of any such building, wall, fence or pole or any fixture or appendage thereunto, or any tree, shrub, or seat, in any public walk, park or garden. The maximum penalty is a fine of £2. A provision of this kind is no longer necessary in view of:

- (a) section 7 of the Litter Act 1982, which prohibits the exhibition of articles and advertisements on, and defacement of, structures etc. and enables local authorities to deal with offending advertisements etc., and
- (b) sections 52 and 53 of the Malicious Damage Act 1861, by virtue of which it is an offence to wilfully or maliciously commit any damage, injury or spoil to or upon any real or personal property whatsoever, whether of a public or private nature (including any tree, sapling, shrub or underwood).

9.9 Sections 18 to 22 of the Dublin Police Act 1842 provide for a number of offences relating to "any ship, boat, or vessel lying in the River Liffey, harbour of Dublin, or harbour of Kingstown, or in any of the docks or creeks adjacent thereto respectively". In brief, the offences are: cutting ropes, cables, etc. (section 18); wilfully letting fall any articles into river or harbour in order to prevent discovery (section 19); possessing instruments for unlawfully procuring and carrying away wine, etc. (section 20); piercing casks, opening packages, etc. (section 21); and breaking packages with intent to spill the contents (section 22).

9.10 These offences are all either covered by other existing offences such as attempted theft or malicious

damage, or are archaic.<sup>6</sup> The Law Reform Commission therefore recommends that sections 18 to 22 of the Dublin Police Act 1842 should be repealed without replacement.

#### Unlawful possession of stolen goods

9.11 Section 53 of the Dublin Police Act 1842 provided for an offence of unlawful possession of stolen or unlawfully obtained goods. It was repealed by the Criminal Justice Act 1951 and section 13 of that Act provided for an offence couched in almost identical terms. Section 55 of the 1842 Act, which was not repealed by the 1951 Act goes on to deal with the situation where the person found in possession declares that he has received the goods from some other person or that he was employed as a carrier, agent, or servant to convey them for some other person. The type of conduct referred to as "unlawful possession" is now dealt with by section 15 of the Criminal Justice Act 1984 (withholding information regarding stolen property etc.) and section 55 of the 1842 Act should be repealed without replacement.

#### Concealing stolen goods, etc.

9.12 Section 49 of the Dublin Police Magistrates Act 1808 provides as follows:

"Any person in whose dwelling-house, out-house, shop, warehouse, cellar, yard, or other place, within the police district of Dublin Metropolis, any stolen goods or chattels, or any receiver of stolen goods, shall be knowingly or wilfully concealed or harboured, shall, upon being convicted of so knowingly or wilfully harbouring or concealing such goods or chattels, or any such receiver of stolen goods, for the first offence

---

<sup>6</sup> The corresponding provisions of the Metropolitan Police Act 1839 (sections 18-22) were repealed by the English Theft Act 1968.

forfeit the sum of one hundred pounds, and for every subsequent offence the sum of two hundred pounds or if he or she shall be unable to pay the same, shall be committed to prison without bail or mainprize, for any time not less than three or more than six months for the first offence, nor less than six nor more than twelve calendar months for every subsequent offence."

The offences of receiving and of withholding information regarding stolen property are sufficient provision in this area and an offence of this kind is no longer required.

9.13 Section 50 of the 1808 Act<sup>7</sup> also makes it an offence for watchmakers, buyers of old metal, dealers in second-hand goods or commodities, etc. to fail to give notice to the appropriate District Justice of their name, address and occupation (maximum penalty £5). Section 51 of the 1808 Act goes on to require any such person who has in his possession any goods or chattels and who has received a written notice that they are stolen to make discovery to the appropriate District Justice of the fact of his possession and of the identity of the person from whom he received them, and to attend before the Justice and be examined on the matter. The penalty for default is a fine of £50 plus a forfeit of the value of the goods in question. If the person omits or refuses to produce the goods on requisition made by a member of the Garda Síochána, he is liable to the same penalty. In default of payment of such penalty, the person may be imprisoned for up to six months.

9.14 Sections 50 and 51 are really provisions designed to ensure the restitution of stolen property, a matter which is now dealt with by section 45 of the Larceny Act 1916. There does not appear to be any compelling reason why a special procedure other than that provided for in section 45, should apply in relation to the restitution of stolen goods merely because they happen to be in the possession of a second-hand dealer etc.<sup>8</sup> The procedure under section 45

---

<sup>7</sup> As amended by the Pawnbrokers Act 1964 (No. 31), s. 6 and 1st Schedule.

<sup>8</sup> Up to 1964 sections 50 and 51 of the 1808 Act used to apply to pawnbrokers. The Pawnbrokers Act 1964 now lays down a procedure similar to that provided for in section 45 of the 1916 Act in relation to goods unlawfully pawned (including stolen goods) - see sections 25 and 26.

is itself in need of review and this will be undertaken as part of the Commission's proposed examination of the law concerning larceny and kindred offences.<sup>9</sup> In the meantime sections 50 and 51 of the 1808 Act may be repealed without replacement.

9.15 Section 5 of the Dublin Police Act 1842 provides as follows:

"Every person who for the purpose of protecting or preventing anything whatsoever from being seized within the police district on suspicion of its being stolen or otherwise unlawfully obtained, or of preventing the same from being produced or used as evidence concerning any felony or misdemeanour committed or supposed to be committed within the police district, shall frame or cause to be framed any bill of parcels<sup>10</sup> containing any false statement in regard to the name or abode of any alleged vendor, the quantity or quality of any such thing, the place whence or the conveyance by which the same was furnished, the price agreed upon or charged for the same, or any other particular, knowing such statement to be false, or who shall fraudulently produce such bill of parcels, knowing the same to have been fraudulently framed, shall be deemed guilty of a misdemeanour."

A number of other provisions might have application in some situations covered by the section - e.g. section 83 of the Larceny Act 1861 (officer or member of body corporate falsifying documents with intent to defraud), section 1 of the Falsification of Accounts Act 1875 (employee falsifying documents with intent to defraud), and section 1 of the Forgery Act 1913 (making a false document in order that it may be used as genuine). The common law offence of perverting the course of justice would also probably have application, though the precise scope of this offence is not

---

<sup>9</sup> See the Law Reform Commission's First Programme for Examination of Certain Branches of the Law with a View to their Reform (Prl. 5984), para. 10(1).

<sup>10</sup> Wharton's Law Lexicon (14th ed., 1938) defines this as "an account of the items comprising a parcel or package of goods, transmitted with them to the purchaser" - i.e. the equivalent, more or less, of an invoice.



altogether clear. In any event a specific offence on the lines of section 5 would seem to be of doubtful utility and it is recommended that that section should be repealed without replacement.

## CHAPTER 10 USE OF UNREGISTERED MOTOR VEHICLES

10.1 It has come to the attention of the Commission that large numbers of unregistered motor vehicles are being used on the public road. This problem is not directly related to any of the provisions of the Dublin Police Acts but it is sufficiently indirectly related to the road traffic provisions of those Acts to warrant the Commission's availing itself of the opportunity of the publication of this Report to make proposals with regard to it.

10.2 The use of unregistered motor vehicles on the public road has serious implications from the point of view of loss of revenue to public funds and possible fraud on subsequent purchasers of late-registered vehicles who may be misled as to the age of a vehicle. Even more serious is the fact that the presence of unregistered vehicles on the public road may deprive the victims of road accidents of redress because they may be unable to identify an offending vehicle that does not stop at the scene of an accident.

10.3 The Commission has given some thought to how the law might be amended so as to rectify this situation. The position under existing law is as follows. Section 13 of the Finance Act 1920 provides for the charging of duties upon licences to be taken out by persons keeping mechanically propelled vehicles. Under section 13(1) of the Roads Act 1920<sup>1</sup> any person who uses any vehicle for which a licence under the Finance Act 1920 is not in force is liable to an excise penalty of £200 or to an excise penalty equal to three times the amount of duty payable in respect of the vehicle, whichever is the greater. Section 6(1) of the Roads Act 1920 requires a county council, on the first issue by it of a licence as mentioned above, to register the vehicle and to assign a separate number to every vehicle registered with them. The assignment, exhibition and form of identification marks for vehicles are provided for by the Road Vehicles (Registration and Licensing) Regulations 1982.<sup>2</sup> Under section 71(1) of the Finance Act 1976, where excise duty is chargeable on a vehicle and is unpaid, then

---

<sup>1</sup> As amended by section 72 of the Finance Act 1982.

<sup>2</sup> S.I. No. 311 of 1982 - see Articles 25 and 26 and Third Schedule.

any person who, at any time while the duty remains unpaid, uses, parks or otherwise keeps the vehicle in a public place or causes another person to so use the vehicle or who authorises such use of the vehicle by another person is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred pounds.<sup>3</sup> It used to be the position that under section 6(2) of the Roads Act 1920 a person was not liable to a penalty for not having a registration mark fixed on his vehicle if he proved that he had had no reasonable opportunity of registering the vehicle and that the vehicle was being driven on a public road for the purpose of being so registered. However, section 6(2) was repealed by section 72(2) of the Finance Act 1982.

10.4 It is understood that an extra-statutory scheme exists whereby members of the motor trade can have advance registration numbers issued to them subject to certain conditions. This facility is available only to reputable dealers in accordance with a strict code of practice. From time to time problems arise in that some vehicles may not be taxed within a reasonable period after an advance number has been assigned to them. In such cases the licensing authority follows up on the matter via the motor dealer and if the motor tax is not paid it is open to the authority to withdraw the facility from the dealer. The Society of the Irish Motor Industry has stated to the Commission that there are some local authorities that will not issue advance registration numbers in this way to motor dealers under any circumstances. The Commission considers that it would be desirable if the scheme of allocation of advance registration numbers to motor dealers could be applied on the widest possible basis. It is conscious, however, of the fact that this would involve questions of possible evasion of payment of vehicle excise duty, as well as of administrative arrangements between the Department of the Environment, the local authorities, motor dealers and the Society of the Irish Motor Industry. Accordingly, it does not propose to make any detailed proposals with regard to the matter but recommends that consideration should be given to the possibility of working out as wide-ranging a scheme of allocation of advance registration numbers to motor dealers as can be achieved. Consideration might also be

---

<sup>3</sup> Section 76 of the 1976 Act, as amended by section 72 of the 1982 Act. By virtue of subsection (3) of section 71 of the 1976 Act a person is not liable to a penalty under both that section and section 13(1) of the 1920 Act.

given to the feasibility of putting such a scheme on a statutory basis.<sup>4</sup>

10.5. It may well not be possible to have a scheme of this kind that is fully comprehensive, so that there would still be cases where advance allocation of a registration mark would not be available at the time when the sale of a vehicle is concluded. Even a comprehensive scheme would be unlikely in itself to constitute a complete solution to the problem of the use of unregistered vehicles on public roads. It seems to be a not uncommon practice at present to leave a new car bought near the end of a year unregistered for quite some time so as to make it "first registered" the following year. A fully comprehensive scheme of advance issuance of registration numbers, even if such were possible, would not get over the problem of the purchaser who consciously decides in this way to take his new vehicle onto the road unregistered. Strict enforcement of the law would provide a partial solution to this problem but there are certain difficulties about enforcement in this area. The owner of an unregistered vehicle is not identifiable in any way from scrutiny of the vehicle itself because it carries no registration mark. So, for practical purposes an unregistered vehicle has to be detected with somebody in it - i.e. in movement, normally, and not when it is parked in a street. This considerably reduces ease of detection.

10.6 The Commission considers that the most effective way of countering the use of unregistered vehicles on the public road would be to impose a requirement on sellers of vehicles to see to it that they are registered and fitted with number plates before delivery. It would then be an offence for a person to deliver upon retail sale, lease or hire a mechanically propelled vehicle that has not been registered or has not fixed on it a mark indicating its registered number. This requirement would be additional to that imposed upon the person driving or keeping the vehicle. The Society of the Irish Motor Industry, whom the Commission consulted about this proposal, objected that "it would be unreasonable to find a solution to the problem of unregistered motor vehicles by transferring to vehicle dealers, who have more than sufficient statutory obligations to cope with, another statutory obligation which does not properly fall on them". The Society "would hope instead that the Law Reform Commission would find it possible to

---

<sup>4</sup> See, for example, section 20 of the English Vehicles (Excise) Act 1971 (c. 10).

recommend that Motor Registration Authorities should make available to reputable motor dealers 'advance' registration numbers in order to eliminate the practice of vehicles being used without registration plates pending completion of registration procedures".

10.7 As has been mentioned, an extra-statutory scheme of this kind already exists but the Commission is not satisfied that such a scheme, however modified or extended in scope, would be likely in fact to eliminate the practice referred to. The Commission is conscious of the fact that the requirement it proposes should be imposed on motor dealers could be regarded as burdening the dealers in order to prevent a malpractice on the part of vehicle owners. However, all that the requirement will entail is that dealers withhold delivery of new vehicles that they have sold until such time as the purchaser has obtained a registration number and plates have been fitted. This would scarcely impose a much greater administrative burden on dealers than their involvement in a scheme of issuance of advance registration numbers would. The requirement could hardly inhibit sales, either, since all dealers would be subject to it. On balance the Commission considers that a requirement of this kind would be desirable in view of its likely high effectiveness in eliminating the use of unregistered vehicles on the public road, an objective which for the reasons outlined in paragraph 10.2 above the Commission regards as of great importance.

10.8 The maximum penalty for the new offence proposed in the preceding paragraph should be a fine of £300 in the case of a first offence and £500 in the case of a second or subsequent offence.

## CHAPTER 11 FINES - GENERAL PROVISIONS

11.1 In the course of the Commission's examination of offences under the Vagrancy Acts and the Dublin Police Acts, it became clear that there are certain problems of general application associated with the maximum penalties prescribed for offences. In the first place there are some summary offences for which imprisonment is the only penalty provided by law, so that a fine is not available as a penalty for such offences. Furthermore, courts other than the District Court do not have power to impose a fine for an offence which is a felony (under section 4 of the Criminal Justice Act 1951 the District Court may impose a fine for any indictable offence which it has jurisdiction to deal with). All courts should be enabled to impose a fine for all offences, whether summary or indictable. Section 9(3) of the Criminal Justice Bill 1967 contained a proposed provision to this effect. It provided that where a person is convicted on indictment of any offence other than an offence for which the court is required by law to sentence the offender to death or life imprisonment, or is convicted summarily of any offence, the court may impose a fine (not exceeding fifty pounds in the case of a summary conviction) in lieu of or in addition to dealing with him in any other way in which the court has power to deal with him. A provision to similar effect should be included in the present proposed legislation (but the maximum fine for a summary conviction should be two hundred pounds).<sup>1</sup>

Mitigation of penalties

11.2 Some enactments contain provisions which enable only a specified period of imprisonment or a fine of a specified amount to be imposed. In other words, the period or amount specified is not a maximum but is the only penalty available. There is no general power to mitigate or reduce such a penalty. However, section 63 of the Dublin Police Act 1842 contains a special provision enabling justices to

---

<sup>1</sup> See section 27(3) of the English Magistrates' Courts Act 1952, as amended by section 32(2) of the Criminal Law Act 1967, and Article 54 of the Magistrates' Courts (Northern Ireland) Order 1981.

mitigate penalties:

"Where by any Act now in force or hereafter to be passed a limited penalty or term of imprisonment is imposed on conviction of an offender before a justice or justices of the peace, it shall be lawful for any one of the said divisional justices before whom such conviction shall be had to reduce or lessen such penalty or term of imprisonment, in such manner as he may think fit: Provided always, that no penalty for the infringement of any Act relating to the revenue of customs or excise, stamps or taxes, shall be reduced by any such justice below the amount or proportion allowed in that behalf by the Act or Acts specially relating thereunto, without the consent of the commissioners of customs or excise, or stamps and taxes, respectively."

No similar provision applies outside of Dublin. A new provision to similar effect and in a way which does not interfere with the exercise of the judicial power, which would apply nationwide should be enacted, along the lines of section 34 of the English Magistrates' Courts Act 1980 and section 55 of the Magistrates' Courts (Northern Ireland) Order 1981.

## CHAPTER 12      POWERS OF ARREST

12.1 There is a number of provisions in the Dublin Police Acts dealing with powers of arrest without warrant. Some of these powers relate to offences under the Acts themselves, while others are more general in nature. The following powers are in the first category:

- (1) Section 26 of the 1842 Act enables any constable belonging to the Dublin police, and all persons whom he calls to his assistance, to take into custody without a warrant any person who within his view offends in any manner against that Act, and whose name and residence are unknown to and cannot be ascertained by the constable. Section 14 of the Summary Jurisdiction (Ireland) Act 1851 confers a similar power of arrest in respect of offences on public roads or streets under that Act.
- (2) Section 14 of the 1842 Act confers a power of arrest without warrant on any constable of the Dublin police within whose view any of the offences (in the nature of nuisances in public places) that are listed in that section is committed. Section 28 of the Town Police Clauses Act 1847 and section 72 of the Towns Improvement (Ireland) Act 1854 likewise confer a power of arrest exercisable by a constable in respect of offences under their provisions.
- (3) Section 25 of the 1842 Act enables a constable belonging to the Dublin police to arrest, with or without warrant, every person who by committing any offence forbidden under the Act has caused any hurt or damage to any person or property.
- (4) Section 29 of the 1842 Act confers a power of arrest without warrant in respect of any person found committing any offence punishable either upon indictment, or as a misdemeanour upon summary conviction, by virtue of that Act. This power may be exercised by any constable belonging to the Dublin police or by the owner of the property on or with respect to which the offence was committed. In the latter eventuality the person apprehended may be detained until he can be delivered into the custody of a constable, to be dealt with according to law.
- (5) Section 19 of the 1842 Act provides for a power of arrest without warrant, exercisable by a constable of



the Dublin police, in respect of offences under that section (wilfully letting fall any article into the river Liffey or Dublin or Dun Laoghaire harbour, to prevent discovery).

12.2 All of these provisions should be replaced by a new provision conferring a power of arrest without warrant on a member of the Garda Siochana in respect of some or all of the new offences being recommended in this Report. What should the nature and the scope of this power be? In the first place many of the proposed new offences in question are such that they do not call for an unqualified power of arrest without warrant. Most of the proposed offences do not carry imprisonment as a possible penalty. As a general principle, subject to some exceptions, arrest without warrant should not be available in respect of such offences, unless the offender's identity cannot be ascertained so as to enable him to be proceeded against by way of summons. Accordingly, as regards all the offences proposed in this Report which do not carry the penalty of imprisonment, a member of the Garda Siochana should be enabled to demand the name and address of any person whom he finds committing or whom he suspects of having committed such an offence. If the person refuses or fails to give his name and address or gives a name and address which the Garda has reasonable grounds for believing to be false or misleading, then the Garda should be empowered to arrest the person without warrant.

12.3 In the case of the proposed new offence of drunkenness in a public place so as to be a danger to oneself or to others (see para. 6.7 above), even though imprisonment is not available as a penalty, there should nevertheless be power for a Garda to arrest without warrant where he finds somebody committing an offence, regardless of whether the Garda knows or can ascertain the person's identity. The nature of these offences is such that it may be necessary, perhaps in the person's own interest as much as anything else, immediately to prevent continuation of the offence by arresting him. A member of the Garda Siochana should also have a power of arrest, unqualified by considerations of identity of the suspect, where he finds somebody committing any of the new offences proposed in this Report which involves imprisonment as a possible penalty.

12.4 The Dublin Police Acts also contain a number of more general powers of arrest without warrant that are not specifically related to offences under the Acts themselves. Some of these have already been considered in the

Commission's Report on Vagrancy and Related Offences.<sup>1</sup> The remaining powers are contained in sections 28, 29 and 24 of the 1842 Act.

12.5 Section 28 of the 1842 Act enables any constable of the Dublin police to arrest without warrant any person who within the limits of the police district "shall be charged by any other person with committing any aggravated assault, in every case in which such constable shall have good reason to believe that such assault has been committed, although not within the view of such constable, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender".

12.6 Before considering whether a power of arrest of this kind should be retained it is necessary to look at the general common law powers that a member of the Garda Siochana has to arrest without warrant. These common law powers are exercisable:

- (i) on reasonable suspicion that the person concerned has committed a felony, or
- (ii) if the Garda sees a breach of the peace being committed, or
- (iii) if he is assaulted or obstructed in the execution of his duty.

A member of the Garda Siochana also has a statutory power of arrest without warrant if he finds a person committing any indictable offence at night (section 11 of the Prevention of Offences Act 1851).<sup>2</sup>

12.7 None of these powers would adequately fill the gap which would be left by a repeal of section 28 of the Dublin Police Act 1842. Assaults, even aggravated assaults, are generally not felonies, but misdemeanours and, even if the assault constitutes a breach of the peace, the common law power of arrest exists only where the Garda sees a breach being committed and not where the breach is over and done

---

<sup>1</sup> LRC 11-1985, ch. 18.

<sup>2</sup> 14 & 15 Vict., c. 26.

with. The 1851 Act provision applies only at night and where the Garda actually finds a person committing an indictable offence. However, the Commission considers that a specific power of arrest "after the event" on reasonable suspicion of aggravated assault is difficult to justify in a situation where the general law requires that the offence in question be a felony before there can be arrest "after the event". The law as to arrest without warrant is in need of general rationalisation along the general lines proposed in the Criminal Justice Bill 1967. Any such rationalisation would involve the adoption of some criterion for arrest on reasonable suspicion other than that the offence in question was a felony. Such a criterion might or might not extend to covering some or all aggravated assaults. In the meantime, however, it is considered that such assaults should not be singled out from the general body of non-felonious offences for the application of a power of arrest on reasonable suspicion "after the event". Section 28 of the 1842 Act should, therefore, be repealed without replacement.

12.8 Section 29 of the Dublin Police Act 1842 enables a constable of the Dublin police to stop, search and detain any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained. Any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect that the property or any part of it has been stolen or otherwise unlawfully obtained, is also entitled to arrest without warrant. The power to stop and search provided for in section 29 is considered in the next chapter. As far as the power of arrest is concerned, Section 13(1) of the Criminal Justice Act 1951 enables a member of the Garda Síochana to arrest without warrant a person whom he reasonably suspects of having or conveying in any manner any thing stolen or unlawfully obtained. However, this provision has to be viewed in association with section 13(2) of the 1951 Act which provides for an offence of unlawful possession. The format of the offence under section 13(2) gave rise to difficulties about framing proper charges and the provision has in effect been superseded by section 15 of the Criminal Justice Act 1984 (withholding information regarding stolen property, etc.). A power of arrest in relation to the offence under section 15 was not provided for. Section 29 of the 1842 Act should be repealed without replacement.

12.9 Section 24 of the 1842 Act inter alia enables every superintendent, inspector or sergeant belonging to the Dublin police to arrest without warrant all persons suspected of being concerned in any felony which he has just

cause to suspect to have been or to be about to be committed in or on board a ship, etc., lying in or upon the River Liffey, the harbour of Dublin or of Dun Laoghaire, etc. It is unnecessary to re-enact this power of arrest in view of the existence of the common law powers of arrest without warrant on reasonable suspicion of felony. The other powers conferred by section 24 (of entry on board vessels etc.) are considered later.<sup>3</sup>

12.10 As has already been mentioned,<sup>4</sup> the law generally in relation to powers of arrest without warrant is in need of review and restatement. It would unduly widen the scope of this Report to attempt such a review. The new provisions suggested in the Report are designed merely to replace the existing powers under the Dublin Police Acts and would themselves call for review if a comprehensive restatement of powers of arrest generally were undertaken.

12.11 It should also be mentioned that the powers of arrest proposed in this Report would be subject to the usual conditions governing lawful arrest, such as that the person arrested must be informed of the offence on suspicion of which he is being arrested and that he must be brought before a District Justice or Peace Commissioner as soon as practicable.<sup>5</sup> It is also the intention, of course, that these powers would be exercised with due discretion and regard for the desirability of avoiding unnecessary conflicts and promoting good relations between the Gardai and the public.

12.12 The Dublin Police Act 1842 also contains a number of provisions relating to procedure following arrest, which can be repealed without replacement. Sections 32, 33 and 35 provide for persons arrested without warrant being taken to the police station etc. and for the grant of station bail.

---

<sup>3</sup> See Chapter 13 below.

<sup>4</sup> See para. 12.7 above.

<sup>5</sup> See section 15(2) of the Criminal Justice Act 1951, as substituted by section 25 of the Criminal Justice Act 1984.

## CHAPTER 13 OTHER POLICE POWERS

Power to stop and search

13.1 The general position as regards power of the Garda Siochana to search persons may be summarised as follows:

"The police have not general authority to search members of the public. They may only do so where the person concerned agrees or in certain limited circumstances prescribed by law. A search in the absence of authority or consent will constitute an assault, and an action in the civil or criminal courts may follow. There are two situations in which a person may lawfully be searched against his will: where there is specific statutory authority to stop and search short of arrest, and in certain circumstances where he has been arrested.

A number of statutory provisions give the police power to stop and search persons without arresting them (though arrest may follow if evidence justifying it is discovered during the search)."<sup>1</sup>

Section 29 of the Dublin Police Act 1842 is an example of such a statutory provision. It enables a constable of the Dublin police to stop, search and detain any vessel, boat, cart or carriage, in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained.

13.2 Section 8 of the Criminal Law Act 1976<sup>2</sup> also confers power on the Garda Siochana to search vehicles and persons

---

<sup>1</sup> The Royal Commission on Criminal Procedure, The Investigation and Prosecution of Criminal Offences in England and Wales: the Law and Procedure (Cmd. 8092-1), paras. 20-21.

<sup>2</sup> No. 32 of 1976.

in vehicles. This section is related to situations where certain specified offences have been, are being or are about to be, committed. Robbery, burglary and aggravated burglary are among the specified offences but other offences under the Larceny Act 1916, such as theft or receiving, are not covered. It should also be mentioned that section 109 of the Road Traffic Act 1961 obliges a person driving a vehicle in a public place to stop the vehicle on being so required by a member of the Garda Siochana. The section does not confer any power to search either the vehicle or its occupants.

13.3 Should section 29 of the 1842 Act be replaced by a new provision conferring power on the Gardai to stop and search persons, vehicles and vessels on reasonable suspicion that they are carrying something stolen or unlawfully obtained? The need for specific powers to stop and search persons suspected of conveying stolen goods has been questioned on the ground that it is doubtful whether they make any significant addition to the ordinary powers arising from arrest under the Larceny Act for theft, false pretences or receiving.

"As the powers are interpreted by the courts the police must reasonably suspect an offence under the Larceny Act before they can detain and search, and they can only detain and search the person who is reasonably suspected to be the offender. This being so, why should they not act under the Larceny Act? They can arrest the suspect under that Act, and having arrested him can search him under the general power to search arrested persons. The only legal change made by the statutory provisions is that the police can search first and arrest afterwards, instead of following the normal procedure of arresting first and searching afterwards."<sup>3</sup>

As against this it can be argued that

".... theoretical advantages are associated with [police stop and search powers] and it would be misleading to dismiss these out of hand. It is true

---

<sup>3</sup> Glanville Williams, "Statutory Powers of Search and Arrest on the Ground of Unlawful Possession", [1960] Crim. L. R. 598 at 605.

that reasonable suspicion is required to support a stop and search, just as it is for arrest. It is perhaps more doubtful whether at present a policeman can arrest a person whom he suspects of being a thief or a handler without specifying however colloquially which. He would, perhaps, have difficulty in complying with Christie v Leachinsky.<sup>4</sup> If, however, he reasonably suspects both, he could arrest on either. But he would have to use words apt to identify the relevant facts. Could a constable reasonably suspect a person of having obtained goods criminally without being particularly certain of the offence concerned? It would be hard to deny the possibility. The point is that the reasonable suspicion required under s.66 of the Metropolitan Police Act 1839<sup>5</sup> is a generalized suspicion that goods are being conveyed which have been unlawfully obtained. The reasonable suspicion under theft legislation must be more particular.

That is not the only difference. Under s.66 and provisions derived from it, the constable need not suspect the accused of having committed any criminal offence from which possession ultimately derived. It might be thought that a person or persons were unwittingly carrying stolen property on their persons or their vehicle and that, therefore, it would be desirable to conduct a search. If this were at all a common pattern, the provision would be distinct in theory and in part in practice from provisions relating to substantive offences, and useful."<sup>6</sup>

However, the difficulties envisaged here ought not to arise in view of the power of arrest that exists under section 13(1) of the Criminal Justice Act 1951 where a Garda reasonably suspects a person of having or conveying in any manner any thing stolen or unlawfully obtained. On

---

<sup>4</sup> [1947] 1 All E.R. 567. It was held in the case that a citizen is entitled to know on what charge or on suspicion of what crime he is arrested. See, for Ireland, People (A.G.) v White [1947] I.R. 247, People (D.P.P.) v Walsh [1980] 294, J.M. Kelly, The Irish Constitution, 507 (2nd ed., 1984).

<sup>5</sup> This provision is the same as section 29 of the Dublin Police Act 1842.

<sup>6</sup> L.H. Leigh, Police Powers in England and Wales (1975) pp. 136-7.

balance, therefore, it is considered that provision for a specific power of stop and search on suspicion of conveying unlawfully obtained goods is not desirable. It is noteworthy that it was not considered necessary to include provision for powers of stop and search in the Criminal Justice Act 1984, even though the existing provision in section 29 of the 1842 Act does not apply outside Dublin.

#### Powers to enter and search premises

13.4 "Unless affirmative justification exists in law, a police officer or any other person may not enter private premises without the permission of the occupier. This right was established by the cases of Leach v Money<sup>7</sup> and Entick v Carrington<sup>8</sup> in the mid-eighteenth century. Any entry without permission or lawful authority is a trespass, and the trespasser is liable to a civil action for damages. There are, however, a considerable number of circumstances in which entry may lawfully be made by police officers or officials of public authorities without the consent of the occupier."<sup>9</sup>

In Ireland the inviolability of the dwelling is protected by Article 40.5 of the Constitution (and evidence obtained in deliberate and conscious violation of constitutional rights is inadmissible save where there are extraordinary excusing circumstances).<sup>10</sup> However, the Gardai have a number of statutory and common law powers to enter and search premises and to seize evidence. The Dublin Police Acts provide for a number of such powers in respect of property situated in the Dublin Metropolitan Area.

---

<sup>7</sup> (1765) 19 State Tr. 1001.

<sup>8</sup> (1765) 19 State Tr. 1029.

<sup>9</sup> The Royal Commission on Criminal Procedure, The Investigation and Prosecution of Criminal Offences in England and Wales: The Law and Procedure (1981, Cmnd. 8092-1), para. 28.

<sup>10</sup> People (A.G.) v O'Brien [1965] I.R. 142.



13.5 Section 52 of the Dublin Police Magistrates Act 1808 enables constables to search for concealed arms under warrant of a Divisional Justice. The power of the Gardai to enter and search premises for firearms are now provided for in section 21 of the Firearms Act 1925<sup>11</sup> and the 1808 Act provision may be repealed without replacement.

13.6 Section 13 of the Dublin Justices Act 1824 provides for the grant by Divisional Justices to constables of warrants "to break open any dwelling house, outhouse, shop, warehouse, cellar, or other place named in such warrant, in order to search for any traitor or felon, or for any accessory to any traitor or felon, or for any receiver of stolen goods". A provision of this kind would appear to be unnecessary since an arrest warrant is obtainable in respect of traitors, felons and receivers of stolen goods and "[a] constable may arrest a person on a warrant wherever he may be met with, and it would appear that for the purpose of effecting the arrest the constable may break open the doors of a house, even when the house is the house of a third party; but before doing so he should inform those in the house of the cause of his coming and demand admittance (2 Hawk. c. 14, s.1) ...."<sup>12</sup>

13.7 Section 13 of the 1824 Act also provides for the grant by Divisional Justices of warrants to search for "any goods, chattels, or other things, stolen or feloniously taken or carried away". Section 54 of the Dublin Police Act 1842 also provides for the issue by a Justice to a constable of a warrant to enter and search any dwelling house or other place in which there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged. A power to search for stolen property is also provided for by section 16 of the Prevention of Crimes Act 1871. All of these provisions may be repealed without replacement in the light of the existence of section 42 of the Larceny Act 1916 and section 103 of the Larceny Act 1861, which provide for the issue of search warrants in respect of property which has been stolen or been the subject of other offences under those Acts.

13.8 Under section 23 of the Dublin Police Act 1842 any

---

<sup>11</sup> No. 17 of 1925.

<sup>12</sup> O'Connor, The Irish Justice of the Peace (1st ed., 1911), p. 18.

superintendent or inspector belonging to the Dublin police has power to enter at all times with such constables as he thinks necessary into and upon every ship, boat or other vessel lying in the River Liffey etc. "for the purpose of inspecting, and upon occasion directing the conduct of any police constable who may be stationed on board of any such vessel and of inspecting and observing the conduct of all other persons who shall be employed on board of any such vessel in or about the loading or unloading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board of any such vessel, and for the effectual prevention or detection of any felonies or misdemeanours". This power is too wide-ranging and unrestricted and should be repealed. The position with regard to powers to enter vessels for the purpose of arrest or search should be the same as that obtaining in relation to premises and special more extensive powers of the kind provided for in section 23 are not justified in modern conditions.

13.9 Section 9 of the Dublin Police Act 1842 provides for power to enter gaming houses. The issue of search warrants in respect of places where there is reasonable ground for suggesting that unlawful gaming is being carried on is provided for by section 39 of the Gaming and Lotteries Act 1956 and section 9 of the 1842 Act may be repealed without replacement.

## CHAPTER 14 SUMMARY OF RECOMMENDATIONS

- (1) Extant offences under the Dublin Police Acts and related offences under other nineteenth-century legislation should be repealed to the extent proposed by the Commission in this Report.
- (2) The maximum fine for an offence under section 16 of the Licensing Act 1872 should be raised to £400.
- (3) The existing offences of assault on a policeman or other peace officer should be replaced by a new offence for which knowledge that, or recklessness as to whether, the victim was a peace officer and was acting in the execution of his duty would be required. A defendant wishing to deny knowledge or recklessness regarding the fact that the peace officer was acting in the execution of his duty would have to adduce sufficient evidence that he believed that the peace officer was not acting in the execution of his duty to raise an issue on the matter (i.e. there would be an evidential, but not a persuasive, burden on the defendant). The maximum penalty for the new offence should be, in the event of conviction on indictment, imprisonment for two years and/or a fine and, in the event of summary conviction, imprisonment for six months and/or a fine of £500. The offences of resistance to or wilful obstruction of a peace officer in the execution of his duty should be subject to the same requirements as to knowledge or recklessness, and should be triable summarily only. The maximum penalty for those offences should be a fine of £200 and/or three months' imprisonment. The term "peace officer" should include members of Garda Síochána, prison officers, members of the Defence Forces, sheriffs and traffic wardens. [Paras. 3.2-3.11].
- (4) Existing offences relating to the riding or driving of animals on public roads or in public places should be replaced by the following offences:
  - (i) riding, driving or leading an animal in a public place in a manner dangerous to the public (maximum penalty: a fine of £400 and/or six months' imprisonment);

- (ii) turning loose any animal or, in the case of the owner or person entitled to custody of an animal, permitting it to wander in any public place (maximum penalty: a fine of £400 and/or six months' imprisonment). [Paras. 4.3-4.6].
  
- (5) Existing provisions prohibiting the deposit of certain materials in thoroughfares should be replaced by a new provision making it an offence without lawful authority or excuse, to deposit anything on a public roadway or footpath (i) to the interruption of any road-user (maximum penalty a fine of £100) or (ii) in consequence of which a road-user is injured or endangered (maximum penalty a fine of £200). Provision should also be made for the regulation by road authorities of the temporary deposit of building materials and builders' skips on public roads. [Para. 5.4].
  
- (6) Existing offences of depositing offensive matter in thoroughfares etc. should be replaced by a new offence of depositing dung, compost or any other offensive matter on a public roadway or footpath without lawful authority or excuse. Unlike the proposed offence at (4) above, this offence would apply even if no interruption of any road-user occurs. The maximum penalty for this offence should be a fine of £100. It should also be an offence (maximum penalty a fine of £50) to allow any filth, dirt, lime or other offensive matter or thing to run or flow onto a public roadway or footpath from any adjoining premises. Provision should be made for the temporary deposit of rubbish in a street with the consent of the road authority. [Para. 5.6].
  
- (7) Existing provisions relating to the safety of vaults, cellars etc. under streets should be replaced by a new provision regulating the construction of cellars etc. under streets and the making of openings into such cellars, as well as the maintenance etc. of such cellars and openings. [Paras. 5.10-5.11].
  
- (8) Existing prohibition of the use of any noisy instrument in any thoroughfare etc. should be replaced by a new provision making it an offence:
  - (i) for any person, for the purpose of hawking, selling, distributing or advertising any article, to use any noisy instrument in any

public place in circumstances likely to cause annoyance to other persons in the neighbourhood;

- (ii) to use a loudspeaker in a street to advertise any entertainment, trade or business, or for any purpose between the hours of 10 p.m. on any day and 7 a.m. on the next day. Certain exceptions would be provided for.
- (iii) to use a loudspeaker on any premises at a volume or in a manner likely to cause annoyance to any person on any other premises or any person using the highway.

The maximum penalty for these offences would be a fine of £200. [Para. 5.12].

- (9) Existing similar provisions should be replaced by a new provision making it an offence without lawful authority or excuse to light any fire or discharge any stone or other missile on or within 20 metres of the centre of any public road so that a road-user is injured, interrupted or endangered - maximum penalty: a fine of £500. [Para. 5.13].
- (10) Existing provisions prohibiting the playing of games in streets should be replaced by a new offence of playing at any game on a public road which is dangerous or causes substantial inconvenience to a road-user - maximum penalty: a fine of £200. [Para. 5.14].
- (11) Deliberately setting fire to a chimney, causing, or likely to cause, personal injury or damage to the property of another, should constitute a summary offence - maximum penalty: a fine of £500. [Para. 5.18].
- (12) "Simple" drunkenness in a public place should be decriminalised. Existing provisions should be replaced by a new provision making it an offence for a person to be found in a public place in such a condition, because he is under the influence of intoxicating liquor or a drug, as to be a source of danger to another person or himself (maximum penalty: a fine of £200). [Paras. 6.4-6.9].

(13) Existing provisions relating to insulting behaviour in public places and disorderly conduct at public meetings should be replaced by new provisions making it an offence

- (i) in a public place to use or engage in any threatening, abusive or insulting words or behaviour, or distribute or display any writing, sign or visible representation which is threatening, abusive or insulting, with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned (maximum penalty: a fine of £400 and/or six months' imprisonment);
- (ii) at a public meeting to act in a disorderly manner for the purpose of preventing the transaction of the business of the meeting (maximum penalty a fine of £100 and/or one months' imprisonment).

[Paras. 7.7 and 7.10].

(14) A new offence should be created which would be committed by a person who in a public place between the hours of 10 p.m. and 7 a.m. or, having been warned by a member of the Garda Síochána to desist, at any other time, engages in any shouting, singing or boisterous conduct in circumstances likely to cause annoyance to other persons in the neighbourhood (maximum penalty: a fine of £500). [Para. 7.8].

(15) The fines under section 1(1)(c) of the Protection of Animals Act 1911 (as amended) should be increased. [Para. 8.2].

(16) Existing offences relating to failure to control dangerous dogs should be replaced by a new offence of

- (i) allowing a dangerous dog to be at large,
- (ii) failing to exercise proper control over such a dog in a public place, or
- (iii) setting on or urging any dog to attack or worry any person or animal.

[Paras. 8.3-8.6].

(17) A new offence should be created which would be committed by a person who delivers on retail sale, lease or hire, a mechanically propelled vehicle that <sup>not</sup> has been registered or has not fixed on it a mark indicating its registered number. Maximum penalty a fine of £300 for a first offence and £500 for a second or subsequent offence. [Paras. 10.1-10.8].

(18) The following general provisions relating to fines should be introduced:

- (i) all courts should be enabled to impose a fine for all offences, whether summary or indictable;
- (ii) where an enactment specifies a fixed, not a maximum, penalty (either by way of imprisonment or fine or both), it should be possible for a court to impose a lower penalty.

[Paras. 11.1-11.2].

- (19) (i) As regards all the offences proposed above which do not carry the possible penalty of imprisonment, a member of the Garda Síochána should be enabled to demand the name and address of any person whom he finds committing or suspects of having committed such an offence. If the person refuses or fails to give his name or address or gives a name or address which the Garda has reasonable grounds for believing to be false or misleading, then the Garda should be empowered to arrest the person without warrant.
- (ii) A member of the Garda Síochána should be empowered to arrest without warrant any person whom he finds committing an offence of the kind proposed at para. (12) above or any of the offences proposed above that carries the possible penalty of imprisonment.

[Paras. 12.2 and 12.3].

APPENDIX

Section 37A of the New Zealand Alcoholism and Drug Addiction Act 1966 (as inserted by the Summary Offences Act 1981):

**"37A. Persons found intoxicated in public place -**

(1) For the purpose of this section, the Minister may from time to time, by notice in the Gazette, declare any premises to be a temporary shelter or a detoxification centre.

(2) Any constable who finds any person intoxicated in any public place -

(a) May take or cause that person to be taken to his usual place of residence or, if he is temporarily residing elsewhere, to his temporary place of residence; or

(b) If that place cannot reasonably be ascertained or it is not reasonably practicable to take that person to it or it may not be safe to leave him there, may take that person or cause him to be taken to any temporary shelter or detoxification centre; or

(c) If neither the course authorised by paragraph (a) nor that authorised by paragraph (b) of this subsection is reasonably practicable, detain or cause that person to be detained in a police station for any period not exceeding 12 hours.

(3) If, after being detained under subsection (2)(c) of this section for a period of 12 hours, any person is still, in the opinion of any constable, so intoxicated as to be incapable of properly looking after himself, the constable may take that person or cause him to be taken to a temporary shelter or detoxification centre.

(4) Where any person is being detained under subsection (2) of this section, he shall be entitled to telephone one person of his choice.

(5) Every constable is justified in detaining in accordance with this section, for any period not



exceeding 12 hours, any person whom he believes on reasonable and probable grounds to be intoxicated.

(6) Notwithstanding the foregoing provisions of this section, any constable who finds any person subject to the Armed Forces Discipline Act 1971 intoxicated in any public place may, instead of dealing with him under those provisions, deliver or cause him to be delivered into service custody to be dealt with in accordance with that Act.

(7) For the purposes of this section, a person is intoxicated if he is under the influence of intoxicating liquor, drug, or other substance to such an extent as to be incapable of properly looking after himself.

(8) In subsection (5) of this section, 'justified' means not guilty of an offence and not liable to any civil proceedings."

