

Search Warrants and Bench Warrants

Following on from its [2009 Consultation Paper on Search Warrants and Bench Warrants \(LRC CP 58-2009\)](#), the Law Reform Commission published its [Report on Search Warrants and Bench Warrants](#) in 2015 making over 70 recommendations for reform of the law in these areas.

Search warrants: main recommendations

The Report points out that there are over 300 separate legislative provisions (143 Acts and 159 ministerial Regulations) that authorise An Garda Síochána and regulators (such as the Central Bank, ComReg and the Environmental Protection Agency) to apply to the District Court for search warrants. Many of these laws contain different rules about applying for, issuing and executing search warrants, giving rise to a serious risk of confusion and inefficiency.

The Commission's Report recommends that these 300 laws on search warrants should be replaced by a single generally applicable Search Warrants Act, which would contain standard rules on applying for, issuing and executing warrants.

Among the main recommendations on search warrants are:

- Search warrants should only be issued by a court. In the vast majority of cases this will be the District Court, as is currently the case. Some existing legislation allows Gardaí and peace commissioners to issue search warrants in urgent situations where a judge of the District Court is not available; but the Report recommends that only a judge of the High Court should be able to issue emergency search warrants, and that this may be done using a live television link or by phone.
- The proposed Search Warrants Act would apply to all indictable offences and to certain summary offences (notably those involving implementation of EU-derived law).
- The general validity period for search warrants should be 7 days, which may be extended if needed (three extensions only). Emergency search warrants issued by the High Court should last for 24 hours only. Exceptional 30 day time limits for search warrants in, for example, the Central Bank (Supervision and Enforcement) Act 2013 and the Companies Act 2014 should be retained because they are needed to investigate complex corporate offences.
- Search warrants should, in general, be executed at reasonable times (usually, daylight hours), but may be executed at other times (so called "dawn raids") if a case is made to the court that this is required.
- Material reasonably believed to be evidence of or relating to an offence, not necessarily the offence to which the search warrant refers, may be seized if found during a search.
- The admissibility of material over which privilege is claimed (for example, legal professional privilege) should be adjudicated by the High Court.
- A Code of Practice on Search Warrants should be published by the Minister for Justice and Equality, which would contain practical guidance on the procedures to be followed in search warrants.
- Failure to comply with the Search Warrants Act or the Code of Practice should not, of itself, affect the admissibility of evidence. The rules on the admissibility of

inadmissibility of illegally and unconstitutionally obtained evidence will continue to be developed by the courts.

Bench warrants and committal warrants for unpaid fines: main recommendations

Bench warrants are arrest warrants, usually issued by the District Court after a person has failed to appear in court. Committal warrants (sometimes called “penal warrants”) are also arrest warrants, and are also usually issued by the District Court, which order a person’s arrest and imprisonment.

Among the main recommendations on bench warrants and committal warrants are:

- The Report supports the recommendations in the Garda Inspectorate’s 2014 Report on Crime Investigation on a consistent national approach to deal with the backlog of unexecuted bench warrants and committal warrants, which is largely an operational Garda matter.
- The Fines (Payment and Recovery) Act 2014 should be brought into force: it allows a court the option to order that a fine may be paid by instalments or through an attachment order, and this would greatly reduce the need to issue committal warrants for non-payment of fines.
- Thousands of committal warrants relate to non-payment of fines for road traffic offences and often involve non-payment of fixed charge penalty notices. Section 44 of the Road Traffic Act 2010, which allows a person to pay a fixed charge notice after a summons has been issued, should also be brought into force because this would also greatly reduce the number of committal warrants being issued every year.
- Legislation should be enacted to allow a person who has been charged with an offence in the District Court that carries a fine to respond by post: this facility is already available in many other countries, including in the UK.