

**“ASSEVERATION”**

I-I/FCA/005

NOTICE & LAWFUL DECLARATION

In the matter of the question as to: “In what circumstances can someone forcibly and lawfully enter another person’s dwelling in Ireland?”

This matter being brought to the Integrity Ireland Findings Committee (‘I-IFC’) for consideration and assessment according to; (i) the Rule of Law; (ii) to existing positive (written) law; and (iii) as per the respective rights, authorities and jurisdiction granted under Irish & international law, as laid out in the I-IFC foundation publications quoted in I-I/FCA/001/3; the Integrity Ireland Association hereby finds and determines as follows:

1. Article 40.5 of the Constitution states: *“The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.”*
2. Section 13 (1) of the Criminal Justice (Public Order) Act, 1994 states: *“It shall be an offence for a person, without reasonable excuse, to trespass on any building or the curtilage thereof in such a manner as causes or is likely to cause fear in another person.”*
3. Section 6 (1) of The Criminal Law Act 1997 states: *“For the purpose of arresting a person on foot of a warrant of arrest or an order of committal, a member of the Garda Síochána may enter (if need be, by use of reasonable force) and search any premises (including a dwelling) where the person is or where the member, with reasonable cause, suspects that person to be, and such warrant or order may be executed in accordance with section 5.”* (Here, ‘Section 5’ refers to the later production of a warrant).
4. Section 6 (2) of the Criminal Law Act 1997 states: *“For the purpose of arresting a person without a warrant for an arrestable offence a member of the Garda Síochána may enter (if need be, by use of reasonable force) and search any premises (including a dwelling) where that person is or where the member, with reasonable cause, suspects that person to be, and where the premises is a dwelling the member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the member to be in charge of the dwelling, enter that dwelling unless—*
 - (a) he or she or another such member has observed the person within or entering the dwelling, or*
 - (b) he or she, with reasonable cause, suspects that before a warrant of arrest could be obtained the person will either abscond for the purpose of avoiding justice or will obstruct the course of justice, or*
 - (c) he or she, with reasonable cause, suspects that before a warrant of arrest could be*

obtained the person would commit an arrestable offence, or (d) the person ordinarily resides at that dwelling.”

5. ‘An arrestable offence’ is one that attracts a penalty of 5 years or more imprisonment.

6. Section 4 (1) of The Criminal Law Act 1997 further states: *“Subject to subsections (4) and (5), any person may arrest without warrant anyone who is or whom he or she, with reasonable cause, suspects to be in the act of committing an arrestable offence.”*

7. Here, the said ‘subsections 4 and 5’ state: *“(4) An arrest other than by a member of the Garda Síochána may only be effected by a person under subsection (1) or (2) where he or she, with reasonable cause, suspects that the person to be arrested by him or her would otherwise attempt to avoid, or is avoiding, arrest by a member of the Garda Síochána. (5) A person who is arrested pursuant to this section by a person other than a member of the Garda Síochána shall be transferred into the custody of the Garda Síochána as soon as practicable.”*

Finding / Determination:

1. Save in circumstances where; (i) an arrestable offence is being committed or is about to be committed and a person intends to effect an arrest; and (ii) where a member of An Garda Síochána has (or believes they have) a valid search warrant, no person may forcibly enter another person’s dwelling.
2. Any person who enters another person’s dwelling – forcibly or otherwise – without permission or without lawful cause, commits the offence of trespass.

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Date of Approval	25.11.2020	Served by	

I hereby declare that this is a true copy of the original PDF version.

Submitted / served by.....

The signed and sealed original of this Asseveration is on file at the Integrity Ireland Association.

