

Anti-Deportation Ireland (ADI) is a national, multi-ethnic grassroots network/alliance of activists, asylum seekers, refugees, community workers, trade unionists, and academics who have come together to campaign against forced deportation in Ireland, and for the abolition of the direct provision system.

We firmly believe that deportation is inhuman, unnecessary and a violation of an individual's fundamental human rights, especially the right to seek and receive protection.

One of our demands is the immediate end to all deportations from Ireland. We believe that the deportations that do occur involve unnecessary violence, intimidation (including the use of racist language) and unnecessary force from the Gardaí carrying them out.

That being said, we feel that whether or not deportations are being carried out, there are several ways a new Policing Authority could ensure greater restraint, fairness and accountability when Gardaí are in contact with asylum seekers, refugees and other immigrants.

Obviously there is a lot of work to be done to change the Garda itself but, for the purposes of this submission, we will be focusing specifically on the proposed Policing Authority.

For clarity, we have used as headings the four areas mentioned in the advertisement for written submissions.

1. Membership of the board

We feel that the Policing Authority Board, whatever its final arrangement, should include a number of non-Garda, non-political and non-professional, or “lay” members.

Assuming that the introduction of the board will lead to a three way balance of power over the Garda (between the Dept. of Justice, the Authority and the Garda itself) we would argue that the board should be made up entirely, or in the majority, of these lay members (ie. the people who are being policed).

Specifically we would like to see an asylum seeker and/or other immigrant as a permanent member of this Board. The other lay members we have in mind are eg. A member or members of the travelling community, etc. In short, representatives of any (and all) groups of people who have had a less than equitable relationship with the Garda.

We want to make clear that we are talking about actual members of the communities. That is, for example, an actual asylum seeker or member of the travelling community rather than a professional “representative” of these groups eg. A member of an NGO or a politician.

2. Functions

We believe that the Authority should, to borrow a phrase from the Northern Ireland Policing Board, “monitor everything the police do”. Unlike the NIPB, however, we believe that the new Irish Authority should have the power to fully investigate specific Gardaí or groups of Gardaí;

1. On the basis of complaints made to the Authority
2. As issues arise as the Authority “monitors” the Garda,

We would also say that whatever the final functions of the Authority, we strongly argue that the Authority should have the specific functions of overseeing and investigating:

1. Garda actions as they carry out deportations
2. The actions of Gardaí and other state agents when they interact with newly arrived immigrants at various “ports of entry”.

Regarding number 2, above: Specifically, the Authority should ensure, through regular monitoring and investigation, that the rights of immigrants are fully upheld at “ports of entry”, especially those of asylum seekers or potential asylum seekers.

Newly arrived immigrants might not have excellent English (or any at all), but this in no way affects their right to seek asylum, as you know. This is why we feel that it is extremely important that the new Authority has specific powers to ensure that any Garda interactions with newly arrived immigrants are with the view to ensuring that the rights of the immigrant are fully upheld.

3. Relationship to Government/Oireachtas

Whatever the new Authority’s relationship to Government and the Oireachtas, the Garda must be much more accountable, individually and collectively, to the people they serve.

4. GSOC/Garda Inspectorate

We feel that it is irrelevant whether these organisations remain intact. Our main concern is increased transparency and accountability within the Garda. This could be achieved by giving these organisations increased powers, or by giving the Authority the investigatory powers of these organisations, or in a variety of other ways. Whatever the final arrangement, the important thing is that:

- The Authority has full powers to investigate the conduct of individual Gardaí and units within the Garda, and
- the Ability to act on these investigations. For example: to publish the findings of the investigations, to discipline Gardaí or to initiate prosecutions against individual Gardaí if necessary.



AGSI

Association of Garda Sergeants and Inspectors
Cumann Sairsintí agus Cigirí de'n Gharda Síochána

Modernising our force. Strengthening our service.



Police Authorities

Structures and Functions

June 2014

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Introduction

AGSI welcome the opportunity to make a submission on the establishment of a policing Authority for An Garda Síochána.

We were the first Representative body or group to call for a police Authority and look forward to working with the Joint Committee on Justice, Equality and Defence to define the structure, selection, make up and roles and responsibilities

We have set out hereunder our observations in respect of each of the areas mentioned in the previous paragraph.

The Association would welcome an opportunity to make an oral presentation in order to fully discuss our submission.

Number of Members of the Authority

The Authority must have sufficient numbers to perform its role effectively while at the same time allowing engagement from a wide range groups/individuals interested in becoming involved.

AGSI believe that:

Number should not be excessive to ensure that business of the Authority is conducted effectively.

The Authority should be no fewer than seven and no greater than 13 members. This figure is a guide only. However, there should be sufficient numbers to allow a diverse involvement outside of any political participation. Under the category 'make up' below AGSI will outline our views on diversity and political involvement.

How Selected/Elected

The selection process must be fair, transparent and free from undue political influence.

AGSI propose the ‘Authority’ would be selected by a cross party body to avoid excessive influence from Government. In this regard we recommend that the Joint Committee on Justice, Equality and Defence is the most suitable political institution to perform this role.

Make-up of the Garda Authority

The Authority should be open to the widest possible audience to ensure the greatest diversity and involvement.

AGSI believe any oversight Authority should be independent of undue political influence. No more than two members of the Authority should be members of the Oireachtas, Seanad Eireann or any local council.

The Authority should comprise of:

- A representative from the business community
- An academic from the criminal justice area/social science area
- Representatives from community groups
- A representatives from Victim advocate groups
- An economist/accountant
- A representative from the ICCL or Human Rights groups
- A representative from social justice groups

Optional areas for where representation might be considered:

- Self-nomination, i.e. where an individual presents themselves for consideration for a seat on the Authority
- The general education area

AGSI believe that individuals should be invited to express an interest in filling a place on the Authority. An independent panel¹ may be considered a suitable way to short list candidates for consideration by the Joint Committee on Justice, Equality and Defence, providing no more than two candidates for each area being considered.

AGSI believe that the majority of the Authority should be from statutory/voluntary sector with a proven record in service to the public and/or an interest in criminal justice issues.

The Joint Committee should select the Authority from the short list provided.

AGSI believe that if there is a political involvement in the Authority, serving public representatives should not hold the position of Chairperson

The length of service on the Authority needs to be determined. Rotating the entire authority at the end of each agreed term would have a negative impact on business continuity. However, having people on the Authority for protracted periods could prove equally negative. Consideration should be given to a rolling rotation of 50% of the Authority every 2/3 years.

¹ (In Scotland the Public Appointments Commission appoints the members of the Scottish Police Authority)

Role and Function of the Authority

The roles and functions must be clearly defined to ensure the Authority works effectively and its performance can be assessed against strict criteria.

The roles and responsibilities should extend to:

- The appointment and dismissal of senior officers within An Garda Síochána. By senior officers AGSI mean Superintendent rank and above
- Holding officers appointed by them accountable. In this regard clear guidelines should be set down to ensure appraisals are carried out effectively
- Setting police crime objectives and approving the Commissioner's Policing Strategy and the implementation of the Commissioner's Annual Policing Plans
- Reviewing actions and decisions of Garda management
- Advising the Government on the budget required to deliver the strategy and plans.
- Having a consultative/oversight role in relation to Garda staffing/resources/IT/training and other key areas.
- Consulting regularly with staff associations to ensure views of Garda members are properly communicated and represented
- Consulting with the Garda Inspectorate to see the recommendations in their reports are implemented
- Establishing a mechanism to allow the views, concerns and matters of interest for Joint Policing Committees to be received and considered by the Authority
- Consulting with the public on a regular basis and publish findings
- Publishing an annual report.

While the Authority is established to provide oversight for An Garda Síochána AGSI believe it should consider and where appropriate comment on:

- The impact that decisions made in other areas of the criminal justice system² could have on the delivery of a policing service
- The impact that decisions of An Garda Síochána could have on the other areas of the criminal justice system

² The Courts and Court Services, the Prison Service and the Probation Services.

Accountability

The Authority must be accountable for its performance and effectiveness.

AGSI believe that the Garda Authority should be accountable to the Joint Committee on Justice, Defence and Equality - the appointing authority.

In this regard the Joint Committee should review the functioning of the authority on an annual basis. If they believe, following examination and inquiry that it is not performing its role effectively it should appoint an 'interim board' to fulfil the role until a new Authority is selected.

The Garda Authority should be subject to a full evaluation after 3 years and to biennial reviews thereafter.



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Government Consultation on Justice Reform

Proposal to establish an Independent Policing Authority

Submission by Mick Wallace TD

I would like to put forward my *Garda Síochána (Amendment) (No. 2) Bill 2014* as a submission to the Government's consultation on the proposal to establish an Independent Policing Authority. Part 2 of the Bill deals with the establishment and functions of a Garda Síochána Independent Board. All of the proposals contained in the Bill derive from extensive consultation with, and review of the research and reports of, many relevant stakeholders which I conducted when preparing and drafting the legislation last year. The stakeholders included many legal academics, Combat Poverty, Social Justice Ireland, the Irish Council for Civil Liberties, the Irish Human Rights Commission, Transparency International, the Morris Tribunal and the Garda Síochána Ombudsman Commission themselves. Further support exists in reports emanating from the United Nations Special Rapporteur in February 2013, and the Council of Europe, including reports from the European Committee for the Prevention of Torture and the European Code of Police Ethics.

Overview

The Bill provides for the establishment of the Garda Síochána Independent Board with monitoring, supervisory and oversight functions over the Garda Síochána. It is hoped that both the composition of the Board, the strong functions relating to community engagement and Joint Policing Committees, and the reporting obligations of the Board to the Joint Oireachtas Committee on Public Service Oversight and Petitions will help strengthen the democratic accountability of the Garda Síochána. The Board also aims to promote public confidence and trust in the Garda Síochána and to reinvigorate the legitimacy of "policing by consent" in Ireland. The Board's objectives include the promotion of respect for human rights within the Garda Síochána and the Board's functions include the human rights-proofing of all Garda policies, procedures and practices and the provision of detailed Codes of Practice for all key operational policies

and procedures to include effective compliance measures. The value of transparency is promoted by the requirement to now publish all relevant Codes and operational policies and procedures and by the identification of the Garda Síochána as a public body for the purposes of Freedom of Information legislation. One of the Board's functions is to conduct a five yearly independent root and branch review of the Garda Síochána's working practices, accountability, operational management and governance.

Many of the Sections of the Garda Síochána Act 2005 are amended consequentially, with the aim of increasing the autonomy and independence of the Garda Síochána from central government, and from direct ministerial control, and from political influence by realigning the structures and accountability of the Garda Síochána and by creating a system of checks and balances to replace the current hierarchical structure.

The overall aim is to establish a power-sharing arrangement between the Board, the Minister and also the Garda Commissioner and to achieve a balanced diffusion of the relevant powers and responsibilities. It is hoped that this measured approach is evident from the particular arrangements set out in regard to the policing plan, the strategy statement, setting of priorities etc.

However, the direct accountability of the Commissioner to the Minister under Section 26(3) of the Principal Act is removed and the Section 40(2) requirement to provide any Garda document to the Government upon request is also removed. The broad powers of direct communication between Minister and Commissioner under Section 41 (a) of the Principal Act are limited by this Bill and the appointment and removal of the Garda Commissioner has been made a function of the Board, following consultation with the Minister. Section 25 of the Principal Act has also been amended to remove the capacity of the Minister to issue specific directives to the Garda Commissioner.

This rebalancing is particularly necessary in light of the extensive functions and powers of the Garda Síochána in providing both policing and security to the State, a state of affairs which was compounded by the vesting of both the Ministry for Justice and the Ministry for Defence in one Minister.

Democratic Accountability

I would like to take this opportunity to respond to Government comments about the establishment of an Independent Garda Authority. I note with concern that the Government press statement of March 25th 2014 summarising the Cabinet's response to the various Garda crises sets out only a commitment to an Independent Garda Authority that would “**maintain** appropriate democratic accountability **to the Oireachtas**.”

Democratic accountability, in its purest form, is the accountability of the Gardai to the citizens it polices. This reinforces and legitimises the policing by consent model, which requires that a mutuality must exist between the Gardai and the people. Democratic accountability currently takes place only through the medium of the Minister answering parliamentary questions from the legislature. This arrangement is inadequate and unsatisfactory for several reasons;

- (1) The legislature is by far the weakest arm in the tri-partite separation of powers arrangement in Ireland. This Government has no plans for reform in this area. Political parties have too much to lose to seriously consider strengthening the legislature through, for example, opposition-chaired Committees or any relaxing of the whip system.
- (2) A Minister for Justice's reputation is too closely linked to that of the Garda Commissioner's under the current legislative structure. Section 26(3) provides that the Garda Commissioner is solely accountable to the Minister in the performance of his functions. Criticising a Garda Commissioner's performance in a public forum would thus be akin to the Minister criticising himself and his own performance. Any 'holding to account' is impossible in these circumstances
- (3) Democratic accountability of the police to the people does not necessarily mean *parliamentary* accountability, and can be more directly provided for through the medium of a strong and effective Independent Police Board.

(4) Using the medium of parliament to provide democratic accountability allows the Minister and the Garda Commissioner to escape any parliamentary requests to explain policy with the excuse that “This is an operational matter for the Garda Commissioner.” As the Garda Commissioner’s conduct and performance is also exempt from GSOC’s remit and due again to the exclusivity of accountability provided for under Section 26(3), there is no further avenue or no other method of holding the Garda Commissioner and by extension the Garda Síochána to account, once this “operational matter” excuse is provided to a parliamentary question.

The improvement of our democratic accountability model would go some way to restore public confidence and trust in the Gardai.

Introductory Notes re my Garda Síochána (Amendment) Bill

In order to provide context and background for the contents of my *Garda Síochána (Amendment) (No. 2) Bill 2014*, it is necessary to look back to October 2008 when the Morris Tribunal completed its extensive work cataloguing corruption, systemic failures in senior Garda management and working practices, the failure of accountability systems, and the impenetrable “blue wall of silence” within the Garda Síochána.

The *Garda Síochána Act 2005* was then posited as the panacea to the many deep-rooted issues uncovered by Mr. Justice Morris, however it is this Act which this *Garda Síochána (Amendment) (No. 2) Bill 2014* amends. I strongly believe that the recommendations of the Morris Tribunal have never been addressed fully by the State and that the 2005 Act does not provide the tools and structures needed to overcome the embedded cultural problems underpinning discipline and the “blue wall of silence” so bleakly exposed by Mr. Justice Morris.

This Bill creates and establishes a Garda Síochána Independent Board, similar to the Northern Ireland Policing Board which was considered a central plank of reform in the Patten report. The Board has supervisory, monitoring and oversight roles and strong

functions relating to community engagement and the promotion of human rights. A policing board is not a novel concept and exists in one form or other in most common law jurisdictions, and has been accepted in the UK since the 60s.

The Irish Council for Civil Liberties (ICCL) and the State's statutory human rights advice body, the Irish Human Rights Commission, along with the Garda Ionann Human Rights Audit in 2004 have long called for consideration of a policing board along with many commentators such as Professor Dermot Walsh, Dr. Vicky Conway and Father Peter McVerry.

In addition, the State has made commitments to policing standards under international law such as the International Covenant on Civil and Political Rights which it has repeatedly been found in breach of, breaches which this Bill sought to address. The European Code of Police Ethics reflects the Council of Europe's established interest in the promotion of the rule of law through human rights based policing and provides for strong accountability measures on multiple levels to both the State and its citizens.

The Board & Functions

Broadly in line with ICCL recommendations, the composition of the Board is envisaged as follows; 16 members to include 2 of the newly appointed Irish Human Rights & Equality Commissioners, 4 members of the Oireachtas (2 from government, 2 from opposition), the Ombudsman for Children, the Data Protection Commissioner, Chief Inspector of the Garda Inspectorate and most importantly, 6 members to represent civil society drawn from the following; NGOS, community representatives from socially marginalised groups/areas, local authorities, trade union/business representatives, representatives from the youth and education sector and a possible representative from the AGSI/AGSS. These 15 would then appoint their own Chairperson from a list provided.

The goal is that the composition of the Board along with the strong functions relating to the co-ordination and facilitation of community engagement through an improved Joint Policing Committees system, and the reporting obligations of the Board to the Joint

Oireachtas Committee on Public Service Oversight and Petitions will provide for a functioning **democratic accountability of the Garda Síochána** to address what Professor Dermot Walsh has referred to as a “serious accountability deficit.” Walsh’s study of the current operation of democratic accountability to the Dail through the Minister was highly critical of its ability to provide meaningful accountability. The Minister’s information can be very limited due to his reliance on answers from the Commissioner – or simply due to the fact that he refuses to answer parliamentary questions on matters of Garda policies, acts or omissions. This combined with the determination of most politicians to prove their support and dedication to the Garda Síochána limits the Dail’s potential to hold the Garda to account. Indeed Minister Noonan explicitly stated in the House in 1987, that the government of the day should never criticise the Garda Síochána. The ministerial practice of refusing to answer for such matters in parliament allows for both the Minister and the government to enjoy the exercise of political control without responsibility in policing matters. It is this overly-deferential treatment of the organisation and management of the Garda Síochána both by politicians and the media that Dr. Vicky Conway has identified as having prevented the absorption of Justice Morris’ more overarching findings and has allowed the acceptance of the fact that wrongs had occurred but also the denial of a need for ongoing concerns for the Garda Síochána.

The Board also aims to promote public confidence and trust in the Garda Síochána and to reinvigorate in Ireland the legitimacy of “policing by consent” and in partnership with local communities. This is a central characteristic to the legitimate use of power.

The Board's objectives include the promotion and integration of respect for human rights within the Garda Síochána and the Board’s functions include the human rights-proofing and monitoring of all Garda policies, procedures and practices and the provision of detailed Codes of Practice for all key operational policies and procedures to include effective compliance measures, as recommended by the Irish Human Rights Commission and the ICCL and by the UN in order for us to comply with Article 7 of the International Covenant on Civil and Political Rights. Although there is provision in the Garda Act 2005

for the adoption of a code of ethics to set out the standards of conduct expected from each Garda, the Minister has not seen fit to produce or adopt one.

One of the Board's most significant functions is the conducting of a five yearly independent root and branch review of the Garda Síochána's working practices, accountability, operational management and governance. No independent root and branch national review of the Garda Síochána has ever taken place in the history of the State and I would submit that it is badly needed. The Board will also appoint and dismiss the Garda Commissioner and the members of the Ombudsman Commission, and will hold monthly meetings with the Garda Commissioner regarding the performance of the Garda Síochána.

The value of transparency is promoted throughout the Bill by the requirement on the Board to now ***publish*** all relevant codes, operational policies and procedures and on the Ombudsman Commission to receive and publish follow-up details of investigations. Publication and accessibility of these documents has long been recommended by the ICCL and the IHRC and transparency was strongly emphasised throughout the Patten Report.

Transparency is also increased in this Bill by the identification of the Garda Síochána as a public body for the purposes of the Freedom of Information legislation, something that was recommended by the UN in their most recent report on compliance with the International Covenant on Political and Civil Rights. This was also promised in the Programme for Government but remains undelivered three years into government. Indeed the Information Commissioner pointed out in 2008 that Ireland is almost unique in Europe in excluding its police force from the scope of freedom of information law and that even the police forces in former Eastern-bloc countries such as Albania, Georgia and Moldova are subject to this legislation. In a worldwide study of 70 countries with Freedom of Information legislation, David Banisar found that only Ireland excluded its police service. Current government proposals regarding freedom of information extend only to the administrative records of the Garda Síochána relating to human resources, finances and procurement matters.

Many of the sections of Garda Act 2005 are amended consequentially, with the aim of increasing the autonomy and independence of the Garda Síochána from central government, and from direct ministerial control and political influence. This is done by realigning the structures and accountability of the Garda Síochána and by creating a system of checks and balances, particularly regarding the drafting of the policing plan, the strategy statement and the setting of policing priorities which replaces the current hierarchical structure.

It is this direct and centralised government control of a single, hierarchical national organisation which has been identified by Professor Dermot Walsh as “rendering the police vulnerable to being used by dominant interests as a vehicle for protecting their privilege through the suppression of minority views and lifestyles.”

The Bill's tri-partite arrangement would ensure the dilution of partisan political control over the Gardai, ensuring that too much police power is not left over-concentrated and under-accounted for in the hands of a party politician.

Some examples include the removal of Section 40(2) referred to by Professor Dermot Walsh as an “alarming provision” which provided that the Minister or the government could demand any record or documents from An Garda Síochána. Secondly, the ministerial power to issue directives under section 25 power to the Garda Commissioner is now transferred to the Board, a non-political and independent body. The direct accountability of the Commissioner to the Minister is also removed. Any references that the Commissioner shall have regard to “government policy” have been replaced by “the recommendations of the Board.” This rebalancing is particularly necessary in light of the extensive functions and powers of the Garda Síochána in providing both civil policing and security to the State, something that merits discussion and possible review at another time.

Unfortunately, it appears that the response at a management and organisational level remains unchanged and that the culture of “denial and defensiveness” identified by the ICCL remains.

It is clear that the Garda Síochána cannot and will not reform themselves. A cultural change is needed and it is my belief that only a partnership of the Garda Síochána, a strengthened Ombudsman Commission and the establishment of an independent Police Board can achieve this.

Excerpt from Garda Síochána (Amendment) (No. 2) Bill 2014 which establishes a Garda Síochána Independent Board

PART 2

THE GARDA SÍOCHÁNA INDEPENDENT BOARD

Chapter 1

Establishment, Appointment, and Accountability of Garda Síochána Independent Board 5

5.—The Minister shall by Order appoint a day to be the establishment day for the purposes of this Part.

6.—(1) On the establishment day, a body corporate to be known as *Bord Neamhspleách an Gharda Síochána* or, in the English language, the Garda Síochána Independent Board stands established to 10 perform the functions assigned to it by this Act.

(2) The Board has, under its corporate name, perpetual succession and an official seal and may—

(a) sue and be sued in its corporate name,

(b) acquire, hold and dispose of land or an interest in land, 15 and

(c) acquire, hold and dispose of any other property.

7.—(1) The Board is to consist of sixteen members, all of whom are to be appointed by the President on:

(a) the nomination of a Special Committee, such Committee 20 to be established solely for this purpose by the Top Level Appointments Commission, and

(b) following fair and independent selection of the Members by the Special Committee through public advertisement and open competition, and on a transparent and merit- 25 based means, and

(c) the passage of resolutions by Dáil Éireann and Seanad Éireann recommending their appointment.

(2) The composition of the Board shall be as follows:

(a) four Members of the Oireachtas, with an equal represen- 30 tation from both Government and opposition Members,

(b) two Commissioners from the Irish Human Rights and Equality Commission,

(c) the Ombudsman for Children,

(d) the Data Protection Commissioner, 35

(e) the Chief Inspector of the Garda Inspectorate,

(f) six members to be selected by from the relevant bodies

and according to the relevant guidelines as prescribed,
(g) a Chairperson of the Board to be selected and appointed by these 15 members from a list of nominees provided by the Special Committee.

(3) In considering the nomination of a person to be a member of the Board, the Special Committee shall satisfy themselves that the person has the appropriate experience, qualifications, training or expertise for appointment to a body having the functions of the Board.

(4) A person who holds judicial office in a superior court may, without relinquishing that office, be appointed as the chairperson of the Board but, unless otherwise provided by the terms of the appointment, he or she shall not, while a member, be required to carry out duties under statute as the holder of that judicial office.

(5) The first appointments to the Board become effective on the establishment day.

(6) If the chairperson is temporarily unable to carry out the duties of office, the other members shall determine which of them is to act, for all or part of the period of inability, in the chairperson's place.

(7) For as long as a member is acting in place of the chairperson under *subsection (6)* references in this Act to the chairperson of the Board are to be read as references to that member.

8.—(1) Subject to *section 9*, a member of the Board holds office for the period, exceeding 3 years but not exceeding 6 years, that the Special Committee may determine at the time of appointment.

25 (2) A member is eligible for reappointment for a second term.

(3) A member holds office on the terms and conditions relating to remuneration (including allowances for expenses, benefits in kind and superannuation) or other matters that may be determined by the Government at the time of appointment or reappointment.

30 (4) The Board may act notwithstanding one or more than one vacancy among its members.

(5) Whenever a vacancy occurs in the membership of the Board caused by the resignation, removal from office or the death of a member, the vacancy is to be filled by appointment in the manner 35 specified in *section 7*.

(6) A member who is appointed to fill a vacancy caused by the resignation, removal from office or the death of a member, holds office for the remainder of the term of office of the replaced member.

9.—(1) A member of the Board may resign from office at any time by letter addressed to the President and copied to the Minister, and the resignation takes effect on the date the President receives the letter.

(2) The President may remove a member of the Board from 45 office, but only for stated misbehaviour or for incapacity and then only on resolutions passed by Dáil Éireann and Seanad Éireann calling for the member's removal.

10.—(1) The quorum for a meeting of the Board is 10 members.

(2) Each question at a meeting of the Board shall be determined

by a majority of the votes of the members present and voting on the question.

(3) In the case of an equal division of votes, the chairperson or 5 other member presiding at the meeting has a second or casting vote.

(4) Subject to this Act, the Board may regulate its own procedures to include the formation of sub-committees.

11.—(1) The Board may appoint such numbers of persons as its officers, with the consent of the Minister for Finance. 10

(2) The Board shall determine the grades of its officers and the numbers of officers in each grade, with the consent of the Minister for Finance.

(3) Officers of the Board are civil servants in the Civil Service of the State. 15

(4) The Board is the appropriate authority (within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996) in relation to its officers.

12.—The Minister may, in each financial year, pay to the Board, out of money provided by the Oireachtas, a grant of such amount as 20 he or she, with the consent of the Minister for Finance, determines towards the expenses of the Commission in performing its functions.

13.—(1) The Board shall keep, in such form and in respect of such accounting periods as may be approved by the Minister with the consent of the Minister for Finance, all proper and usual accounts of 25 money received or expended by it, including an income and expenditure account and a balance sheet.

(2) Not later than 3 months after the end of the accounting period to which the accounts relate, the Board shall submit accounts kept under this section to the Comptroller and Auditor General for audit. 30

(3) Immediately after the audit, the Board shall present to the Minister copies of—

(a) the audited accounts, including the income and expenditure account, the balance sheet and such other (if any) accounts kept under this section as the Minister, after 35 consulting with the Minister for Finance, may direct, and
(b) the Comptroller and Auditor General's report on the accounts.

(4) As soon as practicable after presentation of the audited accounts and the Comptroller and Auditor General's report, the 40 Minister shall cause copies of them to be laid before each House of the Oireachtas.

14.—(1) The Chairperson of the Board shall, whenever required to do so by the Committee of Public Accounts, give evidence to that Committee on—

(a) the regularity and propriety of the transactions recorded, 5 or required to be recorded, in any book or other record of account subject to audit by the Comptroller and Auditor General that the Board is required by this Act to prepare,

(b) the economy and efficiency of the Board in the use of its resources,

(c) the systems, procedures and practices employed by the Board for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Board referred to in—

(i) a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or

(ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann in so far as the report relates to a matter specified in any of *paragraphs (a) to (c)*.

(2) The Chairperson shall not—

(a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or 25 on the merits of the objectives of such policy, or

(b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

15.—(1) In this section and in *section 16* “committee” means—

(a) the committee appointed jointly by both Houses of the Oireachtas known as the Joint Committee on Public Service Oversight and Petitions,

(b) a sub-committee of a committee as defined in *paragraph (a)*.

(2) Subject to *subsection (3)*, the Chairperson shall, at the written request of the committee, and on at least four occasions per annum, attend before it to give account for the fulfilment of the Board’s functions and duties under this Act.

(3) The Chairperson of the Board shall not be required to give 40 account before a committee for any matter that is or is likely to be, the subject of proceedings before a court or tribunal in the State.

(4) The Chairperson of the Board shall, if of the opinion that *subsection (3)* applies to a matter about which he or she is requested to give an account before a committee, inform the committee of that opinion and the reasons for the opinion.

(5) The information required under *subsection (4)* must be given to the committee in writing unless it is given when the Chairperson is before the committee.

(6) If, on being informed of the Chairperson’s opinion about the matter, the committee decides not to withdraw its request relating to 5 the matter, the High Court may, on application under *subsection (7)*, determine whether *subsection (3)* applies to the matter.

(7) Either the Board or the committee may apply in a summary manner to the High Court for a determination under *subsection (6)*, but only if the application is made within 21 days after the date on 10 which the member of the Board is informed of the committee’s decision not to withdraw its request.

(8) Pending the determination of an application under *subsection (7)*, the Chairperson shall not attend before the committee to give account for the matter that is the subject of the application. 15

(9) If the High Court determines that *subsection (3)* applies to the matter, the committee shall withdraw its request in so far as it relates to the matter, but if the Court determines that *subsection (3)* does

not apply, the Chairperson shall attend before the committee to give account for the matter. 20

(10) In carrying out duties under this section, a Chairperson shall not—

(a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy, or 25

(b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

16.—(1) Not later than March 31 in each year, the Board shall submit to the Minister and the Committee a report on its activities 30 to include a review of the performance of the Garda Síochána in the immediately preceding year.

(2) The Board shall, within 2 years from the date of its establishment, submit to the Minister and the Committee a report on—

(a) the effectiveness of the Board, and 35

(b) the adequacy of the functions assigned to it by this Act.

(3) The report submitted under *subsection (2)* may contain recommendations for improving the effectiveness of the Board.

(4) At the end of each 5 year period commencing with the date of its establishment, the Board shall submit to the Minister and the 40 Committee a report reviewing the general performance of its functions in the preceding 5 years.

(5) The Board may make any other reports that it considers appropriate for drawing to the Committee and the Minister's attention matters that have come to its notice and that, in its opinion, 45 should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Committee and the Minister.

(6) As soon as practicable after receiving a report under this section, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

17.—(1) A person who is or was a member or officer of the Board 5 or who is or was engaged under contract or other arrangement by the Board shall not disclose, in or outside the State, information obtained in carrying out the duties of that person's office or of his or her contract or other arrangement with the Board if the disclosure is likely to have a harmful effect.

10 (2) For the purpose of this section, the disclosure of information referred to in *subsection (1)* does not have a harmful effect unless it—

(a) prejudices the effective performance of the Board's functions,

(b) results in the publication of personal information (as defined in the Freedom of Information Act 1997) obtained in the course of the performance of the Board's functions and constitutes an unwarranted and serious infringement of a person's right to privacy.

(3) For the purpose of this section, a person is presumed, unless the contrary is proved, to know that disclosure of information referred to in *subsection (1)* is likely to have a harmful effect if a

reasonable person would, in all the circumstances, be aware that its disclosure could have that effect.

(4) *Subsection (1)* does not prohibit a person referred to in that subsection from disclosing information if the disclosure—

(a) is made to—

- (i) the Garda Commissioner,
- (ii) the Minister,
- (iii) the Attorney General,
- (iv) the Director of Public Prosecutions,
- (v) the Chief State Solicitor,
- (vi) the Criminal Assets Bureau,
- (vii) the Comptroller and Auditor General,
- (viii) the Garda Síochána Inspectorate or an officer of the Inspectorate,
- (ix) the Revenue Commissioners, or
- (x) a member of either of the Houses of the Oireachtas where relevant to the proper discharge of that member's functions,

(b) is made to a court,

(c) is made to a tribunal appointed under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 or a commission of investigation established under the Commissions of Investigation Act 2004,

(d) is made in the course of, and in accordance with, the duties of that person's office or employment or of his or her duties under a contract or other arrangement to work 5 with or for the Board,

(e) is authorised by the Board, or

(f) is otherwise authorised by law.

(5) A person who contravenes *subsection (1)* is guilty of an offence and is liable— 10

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 2 years 15 or both.

(6) A person who contravenes *subsection (1)* and who receives any gift, consideration or advantage as an inducement to disclose the information to which the contravention relates or as a reward for, or otherwise on account of, the disclosure of that information is guilty 20 of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding 25 €40,000 or imprisonment for a term not exceeding 5 years or both.

(7) The provisions of this section are in addition to, and not in substitution for, the provisions of the Official Secrets Act 1963.

(8) The Chairperson of the Board may, following request from 30 the Minister and following consultation with the Data Protection Commissioner, withhold information from the Members of the Board, for reasons of State security.

Chapter 2

18.—The objectives of the Board are:

- (a) to ensure that its functions are performed in an efficient and effective manner,
- (b) to promote public trust and confidence in the Garda Síochána, 40
- (c) to promote respect for human rights and the value of transparency within the Garda Síochána,
- (d) to provide an independent means of oversight, monitoring and supervision of the Garda Síochána, 14
- (e) to increase the democratic accountability of the Garda Síochána,
- (f) to encourage and facilitate community engagement with the Garda Síochána.

19.—The functions of the Board include—

- (a) to human rights proof all Garda policies, procedures and practices to include but not limited to:
 - (i) public order
 - (ii) informer management and intelligence gathering,
 - (iii) intelligence and information sharing,
 - (iv) Garda statutory powers and any proposed expansion thereof,
 - (v) exercise of Garda discretion,
 - (vi) the drafting and updating of all Garda Codes.
- (b) to monitor Garda Síochána implementation of such policies, procedures, and practices,
- (c) to develop detailed and publicly accessible human rightsbased Codes of Practice for all key Garda operational policies and procedures to include effective compliance 20 measures,
- (d) to prepare draft Code of Service, following consultation with the Commissioner and the Ombudsman Commission,
- (e) to include the development of education and training 25 modules on relevant human rights standards,
- (f) to ensure the Garda Síochána operates with high standards of transparency in discharge of its functions and to require publication of all Garda Codes and Garda operational policies and procedures, subject to Section 17B of 30 the Principal Act,
- (g) to promote community engagement and to encourage and facilitate meaningful and inclusive consultation and cooperation between local communities, the Garda Síochána and the Board to include the holding of quarterly 35 public meetings,
- (h) To issue guidelines for the establishment and maintenance of Joint Policing Committees as set out in Chapter 4 of Part 2 of the Principal Act as amended by this Act,
- (i) fulfilling its role in relation to the setting of priorities, the 40 approval of strategy statement and the drafting of the

annual policing plan,

(j) to review the performance of the Garda Síochána in respect of the policing plans and strategy statements and priorities by requiring the Garda Commissioner to provide monthly reports and attend monthly meetings with the Board,

(k) fulfill its consultative role as provided for in the Principal Act as amended by this Act,

(l) fulfill its reporting duties as provided for in this Act. 5

(m) appoint and dismiss the Garda Commissioner and Deputy and Assistant Commissioners,

(n) receive and consider reports from the Ombudsman Commission including regarding compliance or otherwise of the Garda Síochána with any protocols under section 108 10 of Principal Act,

(o) nominate members of the Ombudsman Commission,

(p) within two years of the commencement of this Act, and at five year intervals thereafter, to conduct an independent review of the Garda Síochána governance, accountability 15 and working practices, operational management and governance.



BILLE AN GHARDA SÍOCHÁNA (LEASÚ) (UIMH. 2), 2014
GARDA SÍOCHÁNA (AMENDMENT) (NO. 2) BILL 2014

EXPLANATORY MEMORANDUM

1. This Bill provides for the amendment of the Garda Síochána Act 2005 to strengthen the independence and impartiality of the Garda Síochána Ombudsman Commission in the performance of its functions, recognising that its remit was always intended to be investigatory rather than one of review and oversight. The admissibility criteria of complaints are widened; firstly in regard to time limits, and secondly in regard to subject matter by the introduction of a third ground of admissibility; breach of the newly created Code of Service. Members of the Commission are appointed by the Garda Síochána Independent Board rather than the Government. Section 106 is amended to allow the Commission to initiate its own investigations of policies and procedures of the Garda Síochána where it sees fit to do so. Serving members of the Garda Síochána may no longer form part of the staff of the Ombudsman Commission. A requirement of mandatory supervision by the Ombudsman Commission of all investigations arising from complaints made to it is included in the Bill in order to ameliorate the current situation where approximately 40% of complaints made to the Ombudsman Commission are referred back to the Garda Síochána for internal, unsupervised investigation. A new section is inserted to ensure that the Ombudsman Commission has full and independent access to the Garda Síochána electronic databases and systems. Amendments are also made to strengthen the requirements on the Garda Commissioner in relation to timely provision of evidence, and in relation to information sharing in accordance with protocols under Section 108. The definition of “serious harm” under Section 102 is expanded to include incidences where injuries arise from torture, inhumane or degrading treatment and also rape or sexual assault. Investigations by the Ombudsman under Section 102 into incidences of “serious harm” or death are mandatory and do not require submission of a complaint by any complainant.
2. The Bill also provides for the establishment of the Garda Síochána Independent Board with monitoring, supervisory and oversight functions over the Garda Síochána. It is hoped that both the composition of the Board, the strong functions relating to community engagement and Joint Policing Committees, and the

reporting obligations of the Board to the Joint Oireachtas Committee on Public Service Oversight and Petitions will help strengthen the democratic accountability of the Garda Síochána. The Board also aims to promote public confidence and trust in the Garda Síochána and to reinvigorate the legitimacy of “policing by consent” in Ireland. The Board’s objectives include the promotion of respect for human rights within the Garda Síochána and the Board’s functions include the human rights-proofing of all Garda policies, procedures and practices and the provision of detailed Codes of Practice for all key operational policies and procedures to include effective compliance measures. The value of transparency is promoted by the requirement to now publish all relevant Codes and operational policies and procedures and by the identification of the Garda Síochána as a public body for the purposes of Freedom of Information legislation. One of the Board’s functions is to conduct a five yearly independent root and branch review of the Garda Síochána’s working practices, accountability, operational management and governance.

3. Many of the Sections of the Garda Síochána Act 2005 are amended consequentially, with the aim of increasing the autonomy and independence of the Garda Síochána from central government, and from direct ministerial control, and from political influence by realigning the structures and accountability of the Garda Síochána and by creating a system of checks and balances to replace the current hierarchical structure.

The overall aim is to establish a power-sharing arrangement between the Board, the Minister and also the Garda Commissioner and to achieve a balanced diffusion of the relevant powers and responsibilities. It is hoped that this measured approach is evident from the particular arrangements set out in regard to the policing plan, the strategy statement, setting of priorities etc.

However the direct accountability of the Commissioner to the Minister under Section 26(3) of the Principal Act is removed and the Section 40(2) requirement to provide any Garda document to the Government upon request is also removed. The broad powers of direct communication between Minister and Commissioner under Section 41(a) of the Principal Act are limited by this Bill and the appointment and removal of the Garda Commissioner has been made a function of the Board following consultation with the Minister. Section 25 of the Principal Act has also been amended to remove the capacity of the Minister to issue specific directives to the Garda Commissioner.

This rebalancing is particularly necessary in light of the extensive functions and powers of the Garda Síochána in providing both policing and security to the State, a state of affairs which is compounded by the current vesting of both the Ministry for Justice and the Ministry for Defence in one Minister.

4. Many of the amendments in this Bill, and particularly the establishment of the Board, have been recommended in reports and works published by the United Nations, the Council of Europe including reports from the European Committee for the Prevention of Torture and the European Code of Police Ethics, The Irish Human Rights Commission, The Irish Council for Civil Liberties, Combat Poverty, Social Justice Ireland and the Morris Tribunal.

Provisions of the Act

Part 2 — Establishment and Functions of Garda Síochána Independent Board

Chapter 1

Establishment, Appointment and Accountability

Establishment day

Section 5 provides for the establishment day for this part of the Bill.

Establishment of Board

Section 6 provides for the establishment of the Garda Síochána Independent Board.

Membership and Appointment of Board

Section 7 provides for the membership and the manner of appointment of the members of the Garda Síochána Independent Board. The Board will comprise 16 members (2 Irish Human Rights and Equality Commissioners, 4 members of the Oireachtas (2 from Opposition, 2 from Government), Children's Ombudsman, the Data Protection Commissioner, Chief Inspector of Garda Inspectorate and 6 members from bodies as prescribed by Ministerial Order. It is envisaged that, along with a requirement for gender balance, the relevant statutory instrument would provide that the following are generally represented in such bodies; Community Representatives, particularly from socially marginalised groups (such as the 9 groups identified under the Equal Status Acts 2000-2004) and socially marginalised areas, the NGO sector, Local Authority groups such as Local Authorities Member Association/Association of County and City Councils, Trade Unions, representatives from the Business sector, Representatives from the Youth and Education sector, and possibly one representative from the Association of Garda Sergeants and Inspectors or the Association of Garda Superintendents. All members of the Board shall be appointed by the President, on the nomination of a Special Committee, following the approval of resolutions recommending their appointment passed by both Houses of the Oireachtas. These 15 members would then select a full-time Chairman from a list of nominees selected by the Special Committee.

Terms and Conditions of Office

Section 8 provides for the terms and conditions under which members of the Board will hold office and the arrangements for filling vacancies among the membership. Members of the Board will be appointed for a minimum of 3 years, but not exceeding 6 years and they may be reappointed for a second term.

Resignation or Removal of members in Certain Cases

Section 9 provides for the resignation and removal of members under certain circumstances.

Meetings and Business of Board

Section 10 provides for meetings, quorum and business of the Board.

Officers of the Board

Section 11 provides for the officers of the Board.

Grants to the Board

Section 12 is a standard provision concerning the making of grants in accordance with Government Accounting Rules to the Board to meet its operational costs.

Accounts and Audit

Section 13 is a standard provision relating to the maintenance by the Board of accounts, their submission to the Comptroller and Auditor General and scrutiny by the Oireachtas.

Accountability of Board to Committee of Public Accounts

Section 14 is a standard provision relating to the accountability of the Board to the Committee of Public Accounts.

Accountability of Board to Joint Committee on Public Service Oversight and Petitions

Section 15 provides for accountability to the Committee by quarterly appearances before it to account for the fulfilment of the Board's functions and duties under the Act.

Various Reports by the Board

Section 16 provides for the submission by the Board of various reports to the Committee and the Minister who shall lay them before the Houses of the Oireachtas.

Confidentiality of Information Obtained

Section 17 provides for an offence of harmful disclosure of information by a member or an officer of the Board. Penalties are provided for in respect of contraventions by persons of these provisions.

Chapter 2 — Functions, Powers and Duties

Objectives of the Board

Section 18 provides for the objectives of the Board to include; the promotion of public trust and confidence in the Garda Síochána, the promotion of respect for human rights and the value of transparency within the Garda Síochána, the provision of an independent means of oversight, monitoring and supervision of the Garda Síochána, the improvement of the democratic accountability of the Garda Síochána, the encouragement, co-ordination and facilitation of community engagement with the Garda Síochána.

Functions of the Board

Section 19 provides for the functions of the Board to include; the human rights-proofing of all Garda policies, procedures, and practices; the monitoring of the implementation of such policies; the development and publication of publicly accessible human rights based Codes of practice for all key Garda Operational policies and procedures to include effective compliance measures; the preparation of a draft Code of Service following co-operation with

the Garda Commissioner and the Ombudsman Commission; the development of training and education modules on relevant human rights standards; the promotion of the value of transparency through the publication of all Garda Codes, operational policies and procedures; the promotion of community engagement, meaningful consultation and co-operation with local communities; the issuing of guidelines to establish and maintain Joint Policing Committees; the fulfilment of its role regarding the setting of policing priorities; the approval of the strategy statement, and the drafting of policing plan; the reviewing of the performance of the Garda Síochána in respect of the aforementioned priorities, strategy and plan by requiring the Garda Commissioner to provide monthly reports and attend monthly meetings with the Board; the fulfilment of its consultative and reporting roles as provided for elsewhere in this Act, the appointment and dismissal of the Garda Commissioners and the Deputy and Assistant Commissioners; communication with the Ombudsman Commission including relating to the compliance or otherwise of the Garda Síochána with any protocols under Section 108 of the Principal Act; the nomination of the Ombudsman Commission, the conducting of a five yearly independent review of the Garda Síochána governance; accountability and working practices; operational management and governance.

PART 3

Amendment of the Garda Síochána Act 2005 (Part 2 and 5)

Amendment of Section 9, 10, 11 and 12 of Principal Act

Section 20 provides that the “Board following consultation with the Minister” shall appoint the Garda Commissioner (currently section 9 provides that it is “the Government” alone that appoints the Garda Commissioner).

Section 21 provides similarly for the appointment of Deputy and Assistant Garda Commissioners.

Section 22 provides that the “Board following consultation with the Minister” rather than “the Government” can remove these office holders for — in the opinion of “the Board” (and not “the Government’s”) — any of 3 reasons as currently set out in Section 11.

Section 23 provides that “the Board” and not “the Government” shall be responsible for taking the necessary steps to remove the office holder. These amendments reduce political influence from these appointments in an effort to promote the independent functioning of the Garda Commissioner and by extension, the Garda Síochána.

Amendment of Section 13, 14 and 15 of the Principal Act

Section 24 provides that “the Board” and not “the Government” shall be responsible for the appointment of whatever numbers of Superintendents and Chief Superintendents it sees fit, and Section 25 provides that “the Board” (rather than “the Government”) must consent to the Garda Commissioner’s decision to dismiss a Garda. Section 26 provides that the Commissioner shall submit proposals to the Board (rather than the Minister) for training of Reserve Gardaí and that the Garda Commissioner may only determine the range of powers to be exercised and the duties to be carried out by Reserve Gardaí with the approval of the Board.

Amendment of Section 17 of the Principal Act

Section 27 provides that the Minister shall establish the Code of Ethics by regulations “with the approval of the Board” in consultation with the Commissioner “and the Board”.

Insertion of New Sections 17A and 17B in the Principal Act

Section 28 provides for a new Code of Service to be drawn up to include standards of efficiency and service that members of the public may expect from the Garda Síochána and the Board shall submit such a draft code to the Minister following consultation with the Garda Commissioner and the Ombudsman Commission. Breach of this code shall be a new third ground of admissibility for complaints to the Ombudsman Commission. *Section 17B* provides that all codes of the Garda Síochána, and all operational policies and procedures shall be published, subject to matters of state security.

Amendment of Section 20 of the Principal Act

Section 29 provides that the policing Priorities shall remain to be set by the Minister but now in consultation with both the Garda Commissioner “and the Board”. The Garda Commissioner shall now inform both the Minister “and the Board of the measures taken to achieve these priorities.

Amendment of Section 21 of the Principal Act

Section 30 provides that the Strategy Statement submitted every 3 years by the Commissioner to the Minister shall now be submitted to both the Minister “and the Board” in whatever form and manner they require it. In preparing the Strategy Statement, the Garda Commissioner shall have regard to (amongst other things) “the recommendations of the Board” rather than “relevant government policy” as *Section 21* currently provides. The Board is a representative body rather than a political one and so its recommendations are a more appropriate consideration for the Garda Commissioner than “relevant government policy”.

Amendment of Section 22 of the Principal Act

Section 31 creates a requirement (rather than the current discretion) on the part of the Garda Commissioner to have regard to the most recent report of each Joint Policing Committee. In preparing the Strategy Statement, the Garda Commissioner shall have regard to (amongst other things) “the recommendations of the Board” rather than “relevant government policy” as *Section 22* currently provides. The Board is a representative body rather than a political one and so its recommendations are a more appropriate consideration for the Garda Commissioner than “relevant government policy”. The Commissioner shall submit the policing plan to the Board rather than the Minister, in order to remove direct Ministerial control and supervision of the Garda Commissioner.

Amendment of Section 23 and Section 24 of the Principal Act

Section 32 provides that the three year review report shall be submitted to both “the Board” and the Minister. *Section 33* provides that the Garda Professional Standards Unit shall, upon the direction of either the Commissioner “or the Board” review the performance of the Garda Síochána at all levels and that the Unit may propose measures to either the Commissioner “or the Board”.

Amendment of Section 25 and Section 26 of the Principal Act

Section 34 removes the capacity of the Government as currently stands to issue directives to the Garda Commissioner “concerning any matter relating to the Garda Síochána” to which he is obliged to comply and gives this capacity to the Board with the limits set out in subsection 4 remaining. *Section 35* is amended by redirecting one of the Garda Commissioner’s four functions to advising “the Board and the Minister” on policing and security matters rather than simply “the Minister” as currently stands. *Section 36* is also amended to remove the requirement on the Commissioner to have regard to (amongst other considerations, e.g. policing plan, strategy statement, priorities, directives) relevant policies of the government and replace this with relevant policies of “the Board” (amongst the same other considerations). Subsection 3 — which starkly sets out that the Garda Commissioner’s direct accountability to the Minister for the performance of his functions and those of the Garda Síochána — is removed. This accountability provision has been criticised as “reinforcing ministerial control powers” by rendering the Commissioner statutorily accountable to the Minister for the first time in the history of the State.¹

Amendment of Section 27 and 28 of the Principal Act

Section 36 now provides that the Garda Commissioner must consult with “the Board” instead of “the Minister” regarding arrangements for obtaining views of the public. *Section 37* provides that the Commissioner may only enter into agreements with law enforcement agencies outside the state with the prior consultation of the Government now “following consultation with the Minister” and if that agreement provides for the exchange of information “following consultation with the Data Protection Commissioner”.

Amendment of Section 33 of the Principal Act

Section 38 provides that the Garda Commissioner shall make decisions on the redistribution and stationing of Garda Síochána throughout the State “following consultation with the Board”.

Amendment of Section 35 and Section 36 of the Principal Act

Section 34 of the Principal Act is amended in *Section 40* by giving responsibility to the Board instead of the Minister for the issuing of guidelines concerning Joint Policing Committees, and allowing that any member of the JPC may now be elected as Chairperson by its members (removal of requirement that Chairperson be a member of local authority). *Section 35* is amended by inserting a “quarterly” requirement on all JPCs for public meetings. “The Board” rather than the Minister shall resolve any dispute submitted to it by a JPC. *Section 40* imposes a requirement to submit a report to the Board and the Minister which shall now include recommendations and details of the quarterly public meetings.

Amendment of Section 40 of the Principal Act

Section 41 is amended by the deletion of subsection 2 of *Section 40* of the Principal Act which imposes a duty of the Garda Commissioner to provide to the Minister and the Government “any document in the power or control of the Garda Síochána including

¹Walsh, *Human Rights and Policing in Ireland — Law, Policy and Practice*, (Clarus Press, 2009), p. 370.

Garda records, statements.....” Subsection 2 had been referred to as “an alarming provision”.²

Amendment of Section 41, 42 and 46 of the Principal Act

Section 42 amends Section 40 of the Principal Act by limiting the circumstances where the Garda Commissioner is under a duty to provide information to the Minister, to three circumstances only; security of state, protection of peace and public order, and protection of life and property of the State. The broader subsections (b), (c) and (d) are deleted. The Garda Commissioner is now required to report to the Board rather than the Minister in relation to matters in (b) and (d). This is more appropriate as the entitlement to be kept fully informed by the Commissioner is diffused and the broader subsections regarding “any other matter that the Commissioner believes” and “significant developments that might be expected to affect public confidence in the Garda Síochána....” now refer to a duty to inform to an independent body rather than a political one. Also reporting obligations will now apply to both the Minister “and the Board”. Section 43 provides that either the Minister or the Board can order a Special Inquiry. Section 44 provides that the Garda Commissioner shall submit the annual report to “the Board” as well as to the Minister. Section 61 of the Principal Act is amended by Section 45 and provides for the extension of the exceptions to confidentiality requirements to now include disclosures made to the Board.

Amendment of Section 117 of the Principal Act

Section 46 amends Section 117 of the Principal Act by extending the functions of the Garda Síochána Inspectorate to include an obligation to carry out inspections or inquiries at the request of the Board.

PART 4

Amendment of the Garda Síochána Act 2005 (Part 3 and 4)

Amendment of Section 65, 66, 71 and 76 of the Principal Act

Section 47 provides that “the Board” shall nominate the members of the Ombudsman Commission rather than “the Government” as the legislation currently provides and *Section 48* provides that “the Board” will also set the terms and conditions of office of the members of the Ombudsman Commission. *Section 49* provides that Section 71 be amended so that “the Board” shall approve the numbers of officers appointed by the Ombudsman Commission, rather than the Minister as Section 70 currently provides. Section 51 amends Section 76 so that “the Board” rather than the Minister is responsible for grants to the Ombudsman Commission.

Amendment of Section 74, Section 87, Section 93 and Section 100 of the Principal Act

Section 50 removes the subsections that provide that members of the Garda Síochána may provide special assistance or temporary service to the Ombudsman Commission. This removes the perception of bias which attaches to the Ombudsman Commission currently as serving members of the Gardaí form part of the staff of the Ombudsman Commission. These Gardaí do however currently provide valuable access to the PULSE system to the Ombudsman

²Ibid, p. 371.

Commission. However Section 93A as inserted by Section 60 will fill this gap by now providing that the Ombudsman Commission shall be entitled to full and independent access to electronic databases, incident record management systems and computerised intelligence systems of the Garda Síochána. The effect of Section 93A may be tempered by the state security requirements of the Minister which are now included as matters reviewable under Section 100, as amended by Section 64, by a specially appointed High Court Judge who has existing powers to deal with similar matters. Section 87 is amended by Section 54 to ensure that the conduct of all members of the Garda Síochána, regardless of whether and when they resign or retire, may now be deemed admissible by the Ombudsman Commission.

Amendment of Section 80 of the Principal Act

Section 52 provides for the various reports of the Ombudsman Commission to be provided now to both the Minister “and to the Board”.

Amendment of Section 82 and Section 102 of the Principal Act

Section 53 amends certain definitions set out in Section 81 in order to widen the admissibility criteria currently applied by the Ombudsman Commission; “member of the Garda Síochána” will now include former members of the Garda Síochána. The definition of “misbehaviour” will now be extended to include a breach of the new “Code of Service”, which will form a third ground of admissibility in addition to the current grounds which are firstly breach of discipline and secondly conduct which if substantiated, would amount to an offence. Section 28 provides for the new Code of Service to be drawn up to include standards of efficiency and service that members of the public may expect from the Garda Síochána and the Board shall submit such a draft code to the Minister following consultation with the Garda Commissioner and the Ombudsman Commission. The definition of “serious harm” is expanded to include injuries that would correspond with the European Convention on Human Rights Article 3 definition of “torture, inhuman or degrading treatment” and also injury that would amount to “rape or sexual assault”, an absence that has been noted by the Ombudsman Commission several times in its Reports. The new definition extends the obligation of the Garda Commissioner in Section 102 of the Principal Act. This obliges the Garda Commissioner to refer to the Ombudsman Commission for investigation any matter that indicates that the conduct of a Garda may have caused death/paralysis. Section 66 now extends that definition to include injury amounting to torture, inhuman or degrading treatment and rape or sexual assault.

Amendment of Sections 84 and Section 93 of the Principal Act

Section 54 extends the 6 months time limit to one year in the case of conduct amounting to breach of discipline or Code of Service (similarly to the time limits applicable in Northern Ireland) and to two years from the date of conduct which, if substantiated, would amount to an offence. Section 92 is amended by Section 59 which provides that the Ombudsman Commission shall review its decision to discontinue any investigation on the provision by the Complainant of relevant information not previously considered by the Commission.

Amendment of Sections 90, 92 and 94 of the Principal Act

Section 57 removes the possibility of a member of the Garda Síochána vetoing any attempt to resolve a complaint by mediation or other informal means. The consent of the complainant to mediation/informal means is still however required. *Section 58* provides that a complaint may only be referred back to the Garda Síochána for internal investigation with the consent of the complainant and that supervision by the Ombudsman Commission is mandatory in any such investigation and mandatory reporting requirements are imposed. This has been recommended by the Irish Human Rights Commission and the most recent 2011 figures provided by the Ombudsman Commission's 5 year report indicate that currently approximately 40% of admissible complaints are returned to the Garda Síochána for internal and unsupervised investigation by members of the Garda Síochána themselves.

Amendment of Section 89, Section 107 and 108

Section 56 imposes a requirement (rather than the current discretion) on the Garda Commissioner with regard to timely provision of evidence to the Ombudsman Commission once a complaint is declared admissible, and the postponing of notification to the relevant Garda until such evidence is preserved. *Section 69* amends section 107 also relating to the timely provision of evidence. *Section 108A* is inserted by *Section 70* and provides that any incidence of non-compliance of the Garda Síochána with any protocols made under *Section 108* (currently regarding information-sharing and co-operation between Garda Commissioner and the Ombudsman Commission) may be reported to the Board for its consideration and the Ombudsman Commission's annual report shall include a summary of the general compliance by the Garda Síochána with these protocols. These amendments are aimed at addressing the delays due to information exchange and the issues arising from categorisation of information requests highlighted by the Ombudsman Commission in its 2012 report and the issues raised by the case studies listed by the Ombudsman Commission in the appendix "Issues in the Provision of Information" released on 23rd May 2013 with the Annual Report 2012.

Amendment of Section 97 and Section 101, Section 103

Section 62 amends *Section 97* by providing that the Ombudsman Commission shall, following referral of the results of its investigation back to the Garda Commissioner in a finding of breach of discipline, recommend an appropriate sanction, and shall be notified by the Garda Commissioner of the outcome of any disciplinary proceedings and of any disciplinary sanction imposed on the member concerned to include the grounds and statement of reasons of any decision. *Section 101* of the Principal Act is amended by *Section 65* which provides for similar requirements relating to provision of follow up data by the Director of Public Prosecutions where the results of the Ombudsman Commission are referred to the DPP in a finding that the relevant conduct may have amounted to an offence. *Section 103* is amended by *Section 67* which requires the publication by the Ombudsman Commission of the results of its investigations to include details of any disciplinary proceedings and sanctions imposed by the Garda Commissioner and details of penalties imposed by the DPP in any related prosecutions. This requirement to publish is restricted in certain circumstances by *Section 103(2)*.

Amendment of Section 106

Section 68 amends Section 106 to permit the Ombudsman Commission to investigate on its own initiative and without a request or authorisation from the Minister or the Board the practices, policies or procedures of the Garda Síochána if the Commission decides that it is necessary to do so for the purpose of preventing complaints arising in relation to the relevant practices, policy or procedure. This amendment was recommended by the UN Special Rapporteur to Ireland, M Seggayaka in her report presented to the UN in March 2013 and has been recommended by human rights groups on many occasions.

PART 5

Regulations and Miscellaneous Provisions

Section 74 provides that the Garda Síochána will now be a public body for the purposes of Freedom of Information legislation.

*Deputy Mick Wallace,
Bealtaine, 2014.*



Bille an Gharda Síochána (Leasú) (Uimh. 2), 2014
Garda Síochána (Amendment) (No. 2) Bill 2014

Mar a tionscnaíodh

As initiated



BILLE AN GHARDA SÍOCHÁNA (LEASÚ) (UIMH. 2), 2014
GARDA SÍOCHÁNA (AMENDMENT) (NO. 2) BILL 2014

Mar a tionscnalodh

As initiated

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BILLE AN GHARDA SÍOCHÁNA (LEASÚ) (UIMH. 2), 2014
GARDA SÍOCHÁNA (AMENDMENT) (NO. 2) BILL 2014

Bill

entitled

An Act to amend the Garda Síochána Act 2005 to strengthen the independence and functions of the Office of the Garda Síochána Ombudsman Commission and to provide for the establishment of a body to be known as the Garda Síochána Independent Board with monitoring, oversight and supervisory functions over the Garda Síochána to improve the democratic accountability of the Garda Síochána and to encourage community engagement and to ensure adherence to relevant human rights standards, to provide for the amendment and repeal of certain sections of the Garda Síochána Act 2005 and to provide for related matters. 5 10

WHEREAS the State has committed to human rights standards across all aspects of policing and police organisation, drawn from international obligations under the UN International Covenant on Civil and Political Rights, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union and taking cognisance of recommendations of the Council of Europe including reports from the European Committee for the Prevention of Torture and the European Code of Police Ethics and as recommended by the Morris Tribunal; 15

AND WHEREAS the services provided by the Garda Síochána are largely exempt from the scope and protection of the Equal Status Acts 2000-2008 resulting in a gap in the protection of human rights; 20

AND WHEREAS the Morris Tribunal, the Irish Human Rights Commission and the Garda Síochána Human Rights Audit 2004 identified priorities and recommendations in relation to human rights and community engagement which can be furthered by the establishment of a Garda Síochána Independent Board, by a reform of the structures within the Gardaí and the strengthening of the office of Garda Síochána Ombudsman Commission; 25

AND WHEREAS the State has committed in the Belfast Agreement in 1998 [“the Good Friday Agreement”] to take comparable steps to those being taken in Northern Ireland to improve human rights; and whereas in recognition of the extensive functions and 30

powers of the Garda Síochána in providing both policing and security of the State, there is a need to increase the independence of the Garda Síochána from central government and from direct ministerial control and to improve democratic accountability of the Garda Síochána by the creation of a public and independent body with monitoring, oversight and supervisory functions with reporting obligations to the Committee on Public Service Oversight and Petitions and by the resulting realignment of the structures of the Garda Síochána; 5

AND WHEREAS there is a need to emphasise engagement and create a forum for dialogue and consultation with community, to reinforce the legitimacy of the Irish consensual model of policing and to restore public trust and confidence in the garda and the strengthening of the role of the joint policing committees. 10

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY MATTERS

Short title and collective citation 15

1. (1) This Act may be cited as the Garda Síochána (Amendment) Act 2014.
- (2) The Garda Síochána Act 2005 and Part 7 of the Criminal Justice Act 2007 and the Garda Síochána (Amendment) Act 2014 may be cited together as the Garda Síochána Acts 2005 to 2014.

Commencement 20

2. This Act comes into operation on such day or days as the Minister may appoint by order either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions of the Act.

Interpretation

3. (1) In this Act, unless the context otherwise requires: 25
 - “Board” means the Garda Síochána Independent Board established under *Part 2*;
 - “Chairperson” means the Chairperson appointed under *section 7*;
 - “Code Of Service” means the Code established under section 17A of the Principal Act as amended by this Act;
 - “establishment day” means the day appointed under *section 6*; 30
 - “functions” includes powers and duties and references to the performances of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

“Member” in relation to the Board means a member appointed under *section 7*;

“prescribed” means prescribed by regulation;

“Principal Act” means the Garda Síochána Act 2005;

“Special Committee” means the Committee established under *section 7(1)(a)* to nominate members for the Board.

5

(2) In this Act—

(a) a reference to a section, Chapter, Part or Schedule is to a section, Chapter or Part of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph in which the reference occurs, unless it is indicated that reference to some other provision is intended,

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(c) a reference to any other enactment is to that enactment as amended by or under any other enactment, including this Act, unless the context otherwise requires, and

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(d) all of the terms shall have the meaning ascribed to them in *section 3* of the Principal Act unless the context otherwise requires.

Expenses

4. The expenses incurred in respect of the Garda Síochána Independent Board and the Garda Síochána Ombudsman Commission in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

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PART 2

THE GARDA SÍOCHÁNA INDEPENDENT BOARD

CHAPTER 1

25

Establishment, Appointment, and Accountability of Garda Síochána Independent Board

Establishment day

5. The Minister shall by Order appoint a day to be the establishment day for the purposes of this Part.

Establishment of Board

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6. (1) On the establishment day, a body corporate to be known as *Bord Neamhspleách an Gharda Síochána* or, in the English language, the Garda Síochána Independent Board stands established to perform the functions assigned to it by this Act.

(2) The Board has, under its corporate name, perpetual succession and an official seal and may—

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- (a) sue and be sued in its corporate name,
- (b) acquire, hold and dispose of land or an interest in land, and
- (c) acquire, hold and dispose of any other property.

Membership and appointment of Board

7. (1) The Board is to consist of sixteen members, all of whom are to be appointed by the President on: 5
- (a) the nomination of a Special Committee, such Committee to be established solely for this purpose by the Top Level Appointments Commission; and
 - (b) following fair and independent selection of the Members by the Special Committee through public advertisement and open competition, and on a transparent and merit-based means; and 10
 - (c) the passage of resolutions by Dáil Éireann and Seanad Éireann recommending their appointment.
- (2) The composition of the Board shall be as follows:
- (a) four Members of the Oireachtas, with an equal representation from both Government and opposition Members; 15
 - (b) two Commissioners from the Irish Human Rights and Equality Commission;
 - (c) the Ombudsman for Children;
 - (d) the Data Protection Commissioner;
 - (e) the Chief Inspector of the Garda Inspectorate; 20
 - (f) six members to be selected from the relevant bodies and according to the relevant guidelines as prescribed;
 - (g) a Chairperson of the Board to be selected and appointed by these 15 members from a list of nominees provided by the Special Committee.
- (3) In considering the nomination of a person to be a member of the Board, the Special Committee shall satisfy themselves that the person has the appropriate experience, qualifications, training or expertise for appointment to a body having the functions of the Board. 25
- (4) A person who holds judicial office in a superior court may, without relinquishing that office, be appointed as the chairperson of the Board but, unless otherwise provided by the terms of the appointment, he or she shall not, while a member, be required to carry out duties under statute as the holder of that judicial office. 30
- (5) The first appointments to the Board become effective on the establishment day.
- (6) If the chairperson is temporarily unable to carry out the duties of office, the other members shall determine which of them is to act, for all or part of the period of inability, in the chairperson's place. 35
- (7) For as long as a member is acting in place of the chairperson under *subsection (6)* references in this Act to the chairperson of the Board are to be read as references to

that member.

Terms and conditions of office

8. (1) Subject to *section 9*, a member of the Board holds office for the period, exceeding 3 years but not exceeding 6 years, that the Special Committee may determine at the time of appointment. 5
- (2) A member is eligible for reappointment for a second term.
- (3) A member holds office on the terms and conditions relating to remuneration (including allowances for expenses, benefits in kind and superannuation) or other matters that may be determined by the Government at the time of appointment or reappointment. 10
- (4) The Board may act notwithstanding one or more than one vacancy among its members.
- (5) Whenever a vacancy occurs in the membership of the Board caused by the resignation, removal from office or the death of a member, the vacancy is to be filled by appointment in the manner specified in *section 7*. 15
- (6) A member who is appointed to fill a vacancy caused by the resignation, removal from office or the death of a member, holds office for the remainder of the term of office of the replaced member.

Resignation or removal of members in certain cases

9. (1) A member of the Board may resign from office at any time by letter addressed to the President and copied to the Minister, and the resignation takes effect on the date the President receives the letter. 20
- (2) The President may remove a member of the Board from office, but only for stated misbehaviour or for incapacity and then only on resolutions passed by Dáil Éireann and Seanad Éireann calling for the member's removal. 25

Meeting and business of Board

10. (1) The quorum for a meeting of the Board is 10 members.
- (2) Each question at a meeting of the Board shall be determined by a majority of the votes of the members present and voting on the question.
- (3) In the case of an equal division of votes, the chairperson or other member presiding at the meeting has a second or casting vote. 30
- (4) Subject to this Act, the Board may regulate its own procedures to include the formation of sub-committees.

Officers of the Board

11. (1) The Board may appoint such numbers of persons as its officers, with the consent of the Minister for Finance. 35
- (2) The Board shall determine the grades of its officers and the numbers of officers in

each grade, with the consent of the Minister for Finance.

- (3) Officers of the Board are civil servants in the Civil Service of the State.
- (4) The Board is the appropriate authority (within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996) in relation to its officers.

5

Grants to the Board

- 12. The Minister may, in each financial year, pay to the Board, out of money provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Finance, determines towards the expenses of the Commission in performing its functions.

Accounts and audit

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- 13. (1) The Board shall keep, in such form and in respect of such accounting periods as may be approved by the Minister with the consent of the Minister for Finance, all proper and usual accounts of money received or expended by it, including an income and expenditure account and a balance sheet.
- (2) Not later than 3 months after the end of the accounting period to which the accounts relate, the Board shall submit accounts kept under this section to the Comptroller and Auditor General for audit. 15
- (3) Immediately after the audit, the Board shall present to the Minister copies of—
 - (a) the audited accounts, including the income and expenditure account, the balance sheet and such other (if any) accounts kept under this section as the Minister, after consulting with the Minister for Finance, may direct, and 20
 - (b) the Comptroller and Auditor General's report on the accounts.
- (4) As soon as practicable after presentation of the audited accounts and the Comptroller and Auditor General's report, the Minister shall cause copies of them to be laid before each House of the Oireachtas. 25

Accountability of Board to Committee of Public Accounts

- 14. (1) The Chairperson of the Board shall, whenever required to do so by the Committee of Public Accounts, give evidence to that Committee on—
 - (a) the regularity and propriety of the transactions recorded, or required to be recorded, in any book or other record of account subject to audit by the Comptroller and Auditor General that the Board is required by this Act to prepare, 30
 - (b) the economy and efficiency of the Board in the use of its resources,
 - (c) the systems, procedures and practices employed by the Board for the purpose of evaluating the effectiveness of its operations, and 35
 - (d) any matter affecting the Board referred to in—
 - (i) a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or

- (ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann in so far as the report relates to a matter specified in any of *paragraphs (a) to (c)*.
- (2) The Chairperson shall not—
 - (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy, or
 - (b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

Accountability of Board to Committee

- 15.** (1) In this section and in *section 16* “committee” means—
- (a) the committee appointed jointly by both Houses of the Oireachtas known as the Joint Committee on Public Service Oversight and Petitions,
 - (b) a sub-committee of a committee as defined in *paragraph (a)*.
- (2) Subject to *subsection (3)*, the Chairperson shall, at the written request of the committee, and on at least four occasions per annum, attend before it to give account for the fulfilment of the Board’s functions and duties under this Act.
- (3) The Chairperson of the Board shall not be required to give account before a committee for any matter that is or is likely to be, the subject of proceedings before a court or tribunal in the State.
- (4) The Chairperson of the Board shall, if of the opinion that *subsection (3)* applies to a matter about which he or she is requested to give an account before a committee, inform the committee of that opinion and the reasons for the opinion.
- (5) The information required under *subsection (4)* must be given to the committee in writing unless it is given when the Chairperson is before the committee.
- (6) If, on being informed of the Chairperson’s opinion about the matter, the committee decides not to withdraw its request relating to the matter, the High Court may, on application under *subsection (7)*, determine whether *subsection (3)* applies to the matter.
- (7) Either the Board or the committee may apply in a summary manner to the High Court for a determination under *subsection (6)*, but only if the application is made within 21 days after the date on which the member of the Board is informed of the committee’s decision not to withdraw its request.
- (8) Pending the determination of an application under *subsection (7)*, the Chairperson shall not attend before the committee to give account for the matter that is the subject of the application.
- (9) If the High Court determines that *subsection (3)* applies to the matter, the committee shall withdraw its request in so far as it relates to the matter, but if the Court determines that *subsection (3)* does not apply, the Chairperson shall attend before the committee to give account for the matter.
- (10) In carrying out duties under this section, a Chairperson shall not—

- (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy, or
- (b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

Various reports by the Board

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16. (1) Not later than March 31 in each year, the Board shall submit to the Minister and the Committee a report on its activities to include a review of the performance of the Garda Síochána in the immediately preceding year.
- (2) The Board shall, within 2 years from the date of its establishment, submit to the Minister and the Committee a report on— 10
- (a) the effectiveness of the Board, and
 - (b) the adequacy of the functions assigned to it by this Act.
- (3) The report submitted under *subsection (2)* may contain recommendations for improving the effectiveness of the Board.
- (4) At the end of each 5 year period commencing with the date of its establishment, the Board shall submit to the Minister and the Committee a report reviewing the general performance of its functions in the preceding 5 years. 15
- (5) The Board may make any other reports that it considers appropriate for drawing to the Committee and the Minister's attention matters that have come to its notice and that, in its opinion, should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Committee and the Minister. 20
- (6) As soon as practicable after receiving a report under this section, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

Confidentiality of information obtained

17. (1) A person who is or was a member or officer of the Board or who is or was engaged under contract or other arrangement by the Board shall not disclose, in or outside the State, information obtained in carrying out the duties of that person's office or of his or her contract or other arrangement with the Board if the disclosure is likely to have a harmful effect. 25
- (2) For the purpose of this section, the disclosure of information referred to in *subsection (1)* does not have a harmful effect unless it— 30
- (a) prejudices the effective performance of the Board's functions,
 - (b) results in the publication of personal information (as defined in the Freedom of Information Act 1997) obtained in the course of the performance of the Board's functions and constitutes an unwarranted and serious infringement of a person's right to privacy. 35
- (3) For the purpose of this section, a person is presumed, unless the contrary is proved, to know that disclosure of information referred to in *subsection (1)* is likely to have a harmful effect if a reasonable person would, in all the circumstances, be aware that its

- disclosure could have that effect.
- (4) *Subsection (1)* does not prohibit a person referred to in that subsection from disclosing information if the disclosure—
- (a) is made to—
 - (i) the Garda Commissioner, 5
 - (ii) the Minister,
 - (iii) the Attorney General,
 - (iv) the Director of Public Prosecutions,
 - (v) the Chief State Solicitor,
 - (vi) the Criminal Assets Bureau, 10
 - (vii) the Comptroller and Auditor General,
 - (viii) the Garda Síochána Inspectorate or an officer of the Inspectorate,
 - (ix) the Revenue Commissioners, or
 - (x) a member of either of the Houses of the Oireachtas where relevant to the proper discharge of that member's functions, 15
 - (b) is made to a court,
 - (c) is made to a tribunal appointed under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 or a commission of investigation established under the Commissions of Investigation Act 2004,
 - (d) is made in the course of, and in accordance with, the duties of that person's office or employment or of his or her duties under a contract or other arrangement to work with or for the Board, 20
 - (e) is authorised by the Board, or
 - (f) is otherwise authorised by law.
- (5) A person who contravenes *subsection (1)* is guilty of an offence and is liable— 25
- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
 - (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 2 years or both.
- (6) A person who contravenes *subsection (1)* and who receives any gift, consideration or advantage as an inducement to disclose the information to which the contravention relates or as a reward for, or otherwise on account of, the disclosure of that information is guilty of an offence and is liable— 30
- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or 35
 - (b) on conviction on indictment, to a fine not exceeding €40,000 or imprisonment for a term not exceeding 5 years or both.

- (7) The provisions of this section are in addition to, and not in substitution for, the provisions of the Official Secrets Act 1963.
- (8) The Chairperson of the Board may, following request from the Minister and following consultation with the Data Protection Commissioner, withhold information from the Members of the Board, for reasons of State security. 5

CHAPTER 2

Objectives and Functions

Objectives of the Board

18. The objectives of the Board are—

- (a) to ensure that its functions are performed in an efficient and effective manner, 10
- (b) to promote public trust and confidence in the Garda Síochána,
- (c) to promote respect for human rights and the value of transparency within the Garda Síochána,
- (d) to provide an independent means of oversight, monitoring and supervision of the Garda Síochána, 15
- (e) to increase the democratic accountability of the Garda Síochána,
- (f) to encourage and facilitate community engagement with the Garda Síochána.

Functions of the Board

19. The functions of the Board include—

- (a) to human rights proof all Garda policies, procedures and practices to include but not limited to: 20
 - (i) public order;
 - (ii) informer management and intelligence gathering;
 - (iii) intelligence and information sharing;
 - (iv) Garda statutory powers and any proposed expansion thereof; 25
 - (v) exercise of Garda discretion;
 - (vi) the drafting and updating of all Garda Codes,
- (b) to monitor Garda Síochána implementation of such policies, procedures and practices,
- (c) to develop detailed and publicly accessible human rights-based Codes of Practice for all key Garda operational policies and procedures to include effective compliance measures, 30
- (d) to prepare draft Code of Service, following consultation with the Commissioner and the Ombudsman Commission,
- (e) to include the development of education and training modules on relevant human 35

rights standards,

- (f) to ensure the Garda Síochána operates with high standards of transparency in discharge of its functions and to require publication of all Garda Codes and Garda operational policies and procedures, subject to section 17B of the Principal Act, 5
- (g) to promote community engagement and to encourage and facilitate meaningful and inclusive consultation and co-operation between local communities, the Garda Síochána and the Board to include the holding of quarterly public meetings,
- (h) to issue guidelines for the establishment and maintenance of Joint Policing Committees as set out in Chapter 4 of Part 2 of the Principal Act as amended by this Act, 10
- (i) fulfilling its role in relation to the setting of priorities, the approval of strategy statement and the drafting of the annual policing plan,
- (j) to review the performance of the Garda Síochána in respect of the policing plans and strategy statements and priorities by requiring the Garda Commissioner to provide monthly reports and attend monthly meetings with the Board, 15
- (k) fulfill its consultative role as provided for in the Principal Act as amended by this Act,
- (l) fulfill its reporting duties as provided for in this Act, 20
- (m) appoint and dismiss the Garda Commissioner and Deputy and Assistant Commissioners,
- (n) receive and consider reports from the Ombudsman Commission including regarding compliance or otherwise of the Garda Síochána with any protocols under section 108 of Principal Act, 25
- (o) nominate members of the Ombudsman Commission,
- (p) within two years of the commencement of this Act, and at five year intervals thereafter, to conduct an independent review of the Garda Síochána governance, accountability and working practices, operational management and governance.

PART 3 30

AMENDMENT OF THE GARDA SÍOCHÁNA ACT 2005 (PART 2 AND 5)

Amendment of section 9 of the Principal Act

20. Section 9 of the Principal Act is amended in subsection (1) by substituting “Board, following consultation with the Minister” for “Government”.

Amendment of section 10 of the Principal Act 35

21. Section 10 of the Principal Act is amended in subsection (1) by substituting “Board, following consultation with the Minister,” for “Government” wherever appears.

Amendment of section 11 of the Principal Act

22. Section 11 of the Principal Act is amended by—

- (a) substituting in subsection (1) “Board, following consultation with the Minister,” for “Government”,
- (b) substituting in paragraph (c) of subsection (1) “Board’s” for “Government’s”, 5
- (c) substituting in subsection (2) “Board” for “Government” wheresoever appears,
- (d) substituting in subsection (3) “Board” for “Government”.

Amendment of section 12 of the Principal Act

23. Section 12 of the Principal Act is amended by substituting “Board” for “Government” wheresoever appears. 10

Amendment of section 13 of the Principal Act

24. Section 13 of the Principal Act is amended in subsection (1) by substituting “Board in consultation with the Minister” for “Government”.

Amendment of section 14 of the Principal Act

25. Section 14 of the Principal Act is amended in paragraph (d) of subsection (2) by substituting “Board” for “Government”. 15

Amendment of section 15 of the Principal Act

26. Section 15 of the Principal Act is amended by—

- (a) substituting in paragraph (a) of subsection (4) “Board” for “Minister”, and
- (b) inserting in subsection (5) “, with the approval of the Board,” after “Commissioner”. 20

Amendment of section 17 of the Principal Act

27. Section 17 of the Principal Act is amended by—

- (a) inserting in subsection (1) “, with the approval of the Board,” after “shall”,
- (b) inserting in subsection (2) “and the Board” after “the Garda Commissioner”, and 25
- (c) inserting in subsection (2) “in consultation with the Board” after “the Commissioner”.

Insertion of new sections 17A and 17B in the Principal Act

28. The Principal Act is amended by inserting the following sections after Section 17:

- “17A. (1) The Minister, with the approval of the Board, shall, by regulation, 30
establish a Code of Service that includes standards of service and
efficiency that members of the public may expect from members of the
Garda Síochána.

- (2) Before establishing or amending a Code of Service, the Minister shall request the Board to prepare and submit to the Minister a draft Code of Service.
- (3) In preparing a draft Code of Service, the Board shall consult with the Garda Commissioner and the Ombudsman Commission about the content of the draft. 5

17B. All codes of the Garda Síochána and all Garda operational policies and procedures shall be published, subject to matters of State security.”.

Amendment of section 20 of the Principal Act

29. Section 20 of the Principal Act is amended by— 10
- (a) inserting in subsection (2) “and the Board” after “Commissioner” wheresoever appears, and
 - (b) inserting in paragraph (a) of subsection (4) “and the Board” after “Minister”.

Amendment of section 21 of the Principal Act

30. Section 21 of the Principal Act is amended by— 15
- (a) substituting in subsection (1) “to the Minister and the Board for their” for “to the Minister for his or her”,
 - (b) substituting in paragraph (a) of subsection (3) “the recommendations of the Board” for “relevant Government policy”, and
 - (c) deleting in paragraph (b) of subsection (3) “by the Minister”. 20

Amendment of section 22 of the Principal Act

31. Section 22 of the Principal Act is amended by—
- (a) substituting in paragraph (e) of subsection (2) “the recommendations of the Board” for “relevant Government policy”,
 - (b) substituting in subsection (3) “shall” for “may”, 25
 - (c) substituting in subsection (4) “Board” for “Minister”,
 - (d) substituting in subsection (5) “Board” for “Minister” wheresoever appears, and
 - (e) inserting in subsection (6) “The Board shall submit a copy to the Minister and” after “policing plan,”.

Amendment of section 23 of the Principal Act 30

32. Section 23 of the Principal Act is amended by inserting in subsection (1) “and to the Board” after “Minister”.

Amendment of section 24 of the Principal Act

33. Section 24 of the Principal Act is amended by—

- (a) inserting in paragraph (a) of subsection (1) “or the Board” after “Commissioner,”, and
- (b) inserting in paragraph (b) of subsection (1) “and the Board” after “Commissioner”.

Amendment of section 25 of the Principal Act

5

34. Section 25 of the Principal Act is amended by—

- (a) substituting in subsection (1) “Board” for “Government”,
- (b) inserting in subsection (5) “and the Board” after “inform the Minister”, and
- (c) substituting in subsection (5) “specified by the Board” for “specified by the Minister”.

10

Amendment of section 26 of the Principal Act

35. Section 26 of the Principal Act is amended by—

- (a) inserting in paragraph (c) of subsection (1) “and the Board” after “Minister”,
- (b) substituting in paragraph (c) of subsection (2) “Board” for “Government”, and
- (c) deleting subsection (3).

15

Amendment of section 27 of the Principal Act

36. Section 27 of the Principal Act is amended by substituting “Board” for “Minister” wheresoever appears.

Amendment of section 28 of the Principal Act

37. Section 28 of the Principal Act is amended by—

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- (a) inserting in subsection (1) “and following consultation with the Board,” after “Government,”, and
- (b) inserting in subsection (2) “following consultation with the Data Protection Commissioner” after “fit”.

Amendment of section 33 of the Principal Act

25

38. Section 33 of the Principal Act is amended by inserting in subsection (1) “after consultation with the Board” after “Commissioner”.

Amendment of section 35 of the Principal Act

39. Section 35 of the Principal Act is amended by—

- (a) substituting in subsection (1) “Board shall” for “Minister shall”,
- (b) substituting in subsection (2) “shall include” for “may include”,
- (c) substituting the following paragraph for paragraph (c) of subsection (2):

30

- “(c) the selection and appointment of a member of the committee as chairperson of the committee by the members of the committee,”,
- (d) substituting in paragraph (1) of subsection (2) “Board” for “Minister”,
- (e) substituting in subsection (4) “Board may” for “Minister may”, and
- (f) inserting in subsection (5) “the Board shall forward a copy of guidelines issued under this section to” before “the Minister”. 5

Amendment of section 36 of the Principal Act

40. Section 36 of the Principal Act is amended by—

- (a) inserting in paragraph (c) of subsection (2) “quarterly” after “host”,
- (b) substituting in subsection (3) “Board whose” for “Minister whose”, 10
- (c) substituting in paragraph (b) of subsection (5) “Board” for “Minister”, and
- (d) inserting in paragraph (a) of subsection (5) “, together with any recommendations arising therefrom and including a summary of the details of the public meetings referred to in paragraph (c) of subsection (2)”.

Amendment of section 40 of the Principal Act

15

41. Section 40 of the Principal Act is amended by—

- (a) inserting in subsection (1) “Board” after “fully to the” and by inserting “relevant” before “functions”,
- (b) deleting subsection (2), and
- (c) substituting in subsection (3) “any Garda records, statements made by members of the Garda Síochána and by other persons and reports in the power or control of the Garda Síochána that are” for “material specified in subsection (2) that is”. 20

Amendment of section 41 of the Principal Act

42. Section 41 of the Principal Act is amended by—

- (a) deleting paragraphs (b), (c) and (d) in subsection (1), 25
- (b) inserting the following subsection after subsection (1):
 - “(1A) The Garda Commissioner shall keep the Board fully informed of the following—
 - (a) significant developments that might reasonably be expected to affect public confidence in the Garda Síochána, 30
 - (b) any other matters that in the Commissioner’s opinion should be brought to the Board’s attention,”,
- and
- (c) substituting in subsections (2), (3) and (4) “Board or the Minister” for “Minister” wheresoever appears. 35

Amendment of section 42 of the Principal Act

43. Section 42 of the Principal Act is amended by the substituting of “Minister or the Board” for “Minister” wheresoever appears.

Amendment of section 46 of the Principal Act

44. Section 46 of the Principal Act is amended by inserting in subsection (1) “and the Board” after “to the Minister”. 5

Amendment of section 62 of the Principal Act

45. Section 62 of the Principal Act is amended by inserting the following subparagraph after subparagraph (x) in paragraph (a) of subsection (4):

“(xi) The Board”. 10

Amendment of section 117 of the Principal Act

46. Section 117 of the Principal Act is amended by substituting in subsection (2) “Minister or the Board” for “Minister” wheresoever appears.

PART 4

AMENDMENT OF THE GARDA SÍOCHÁNA ACT 2005 (PART 3 AND 4) 15

Amendment of section 65 of the Principal Act

47. Section 65 of the Principal Act is amended by substituting “Board” for “Government” wheresoever appears.

Amendment of section 66 of the Principal Act

48. Section 66 of the Principal Act is amended by substituting in subsection (1) “Board,” for “Government”. 20

Amendment of section 71 of the Principal Act

49. Section 71 of the Principal Act is amended by—

- (a) substituting in subsection (1) of “approved by the Board” for “approved by the Minister”, and 25
- (b) substituting in subsection (2) of “approved by the Board” for “approved by the Minister”.

Amendment of section 74 of the Principal Act

50. Section 74 of the Principal Act is amended by—

- (a) deleting subsections (1)(a) and (4), and 30
- (b) deleting in subsection (3) the words “the Garda Síochána or”.

Amendment of section 76 of the Principal Act

51. Section 76 of the Principal Act is amended by inserting “with the approval of the Board and” after “he or she,”.

Amendment of section 80 of the Principal Act

52. Section 80 of the Principal Act is amended by— 5
- (a) inserting in subsection (1) “and to the Board” after “Minister”,
 - (b) inserting in subsection (4) “and to the Board” after “Minister”,
 - (c) substituting in subsection (5) “the attention of the Minister and the Board” for “the Minister’s attention”, and
 - (d) inserting in subsection (5) “and to the Board” after “report to the Minister”. 10

Amendment of section 82 of the Principal Act

53. Section 82 of the Principal Act is amended in subsection (1)—
- (a) by substituting the following definition for the definition of “member of the Garda Síochána”:
“ ‘member of the Garda Síochána’ includes former members of the Garda Síochána but does not include the Garda Commissioner;”, 15
 - (b) by substituting the following definition for the definition of “misbehaviour”:
“ ‘misbehaviour ’ means conduct that constitutes an offence or a breach of discipline or a breach of the code of service;”,
 - (c) by inserting the following under the definition of “serious harm”: 20
“(d) amounts to torture or inhuman or degrading treatment, or
(e) amounts to rape or sexual assault”.

Amendment of section 84 of the Principal Act

54. Section 84 of the Principal Act is amended by substituting the following for subsection (1)— 25
- “(1) Subject to subsection (1A), a complaint must be made within the period of 1 year beginning on the date of the conduct giving rise to the complaint or within any extension of that period allowed under subsection (2).
 - (1A) Where the conduct giving rise to the complaint would, if substantiated, constitute an offence by the member of the Garda Síochána, a complaint must be made within the period of 2 years beginning on the date of the said conduct or within any extension of that period allowed under subsection (2).” 30

Amendment of section 87 of the Principal Act

55. Section 87 of the Principal Act is amended in subsection (4) in paragraph (b) by substituting “at any time before or after” for “at any time after”.

Amendment of section 89 of the Principal Act

56. Section 89 of the Principal Act is amended in subsection (1)— 5
- (a) in paragraph (b) by substituting “shall” for “may”, and
 - (b) by inserting the following after paragraph (b):
 - “(c) on determination that a complaint is admissible under section 87 shall forward all evidence in subsection (1)(a) above to the Ombudsman Commission without delay.”, 10
 - (c) in subsection (2) by substituting “subsection (1)(a) and (b)” for “subsection (1)”. 10

Amendment of section 90 of the Principal Act

57. Section 90 of the Principal Act is amended—
- (a) by deleting in subsection (3) “and the member of the Garda Síochána”, and
 - (b) by deleting subsection (4). 15

Amendment of section 92 of the Principal Act

58. Section 92 of the Principal Act is amended by inserting in paragraph (a) “with the consent of the complainant,” before “refer”.

Amendment of section 93 of the Principal Act

59. Section 93 of the Principal Act is amended by inserting the following subsection after subsection (2): 20
- “(3) Where, subsequent to the making of a direction under subsection (1), the complainant provides relevant information not previously considered by the Ombudsman Commission, the Commission shall review the decision to discontinue.”. 25

Insertion of new section 93A in the Principal Act

60. The Principal Act is amended by the insertion of the following section after section 93:
- “93A. For the purpose of an investigation of any complaint made under section 83, and subject to regulations made pursuant to section 126, the Ombudsman Commission shall be entitled to full and independent access 30 to and may inspect all electronic incident record management systems, electronic information databases, and computerised intelligence systems of the Garda Síochána.”.

Amendment of section 94 of the Principal Act

61. Section 94 of the Principal Act is amended by—

- (a) substituting in subsection (2) “shall” for “may”,
- (b) substituting the following subsection for subsection (3):

“The Ombudsman Commission shall supervise the investigation of
each complaint referred under section 92(a).”
- (c) deleting subsection (4), and
- (d) substituting the following subsection for subsection (5):

“(5) In the course of supervising the investigation, the Ombudsman
Commission—

 - (a) shall require the appointed member to keep it informed of the
progress of the investigation,
 - (b) shall require the appointed member to submit to it interim reports at
such times and in relation to such matters as the Commission may
direct,
 - (c) may arrange for a designated officer of the Commission to be
present during any interview conducted by the appointed member
in the course of the investigation,
 - (d) may direct the appointed member to investigate further any aspect
of the complaint.”
- (e) deleting in subsection (6) “if the investigation is supervised,”, and
- (f) deleting subsections (9), (10) and (11).

Amendment of section 97 of the Principal Act

62. Section 97 of the Principal Act is amended by—

- (a) inserting in subsection (1)(b) “and a recommendation as to an appropriate
sanction” after “member”, and
- (b) substituting the following subsection for subsection (3):

“(3) The Ombudsman Commission shall be notified of the outcome of any
disciplinary proceedings or action taken and of any disciplinary
sanction imposed on the member concerned, to include the grounds if
any, on which the complaint was upheld, and the grounds if any on
which the complaint was not upheld together with a statement of the
reasons.”

Amendment of section 98 of the Principal Act

63. Section 98 of the Principal Act is amended by substituting “or 94(8)(a)” for “94(8)(a) or
94(11)(b)”.

Amendment of section 100 of the Principal Act

64. Section 100 of the Principal Act is amended by—

- (a) substituting in subsection (3)(a) “the operation of section 93A, sections 96(4) to (6) and 99(3) to (5)” for “the operation of sections 96(4) to (6) and 99(3) to (5)”, and
- (b) substituting in subsection (4)(a) “under section 93A, section 96 or section 99” for “under section 96 or 99”.

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Amendment of section 101 of the Principal Act

65. Section 101 of the Principal Act is amended by inserting in subsection 3(b) “, together with details of any penalties imposed” after “report”.

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Amendment of section 102 of the Principal Act

66. Section 102 of the Principal Act is amended by—

- (a) inserting the following paragraph after paragraph (b) in subsection (4):
 - “(c) behaved in a manner that would constitute a breach of the Code of Service,”,
- and
- (b) substituting in subsection (5) “the Minister or the Board” for “the Minister”.

15

Amendment of section 103 of the Principal Act

67. Section 103 of the Principal Act is amended by—

- (a) inserting in subsection (1) the following paragraph after paragraph (b):
 - “(c) The Ombudsman Commission shall publish the results of investigations referred to in this subsection, to include:
 - (i) details of any disciplinary proceedings and any related sanctions imposed by the Garda Commissioner, and
 - (ii) details of any penalties imposed as a result of any related prosecution undertaken by the Director of Public Prosecutions,”,
- and
- (b) inserting in subsection (2) “or publish” after “to provide”.

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Amendment of section 106 of the Principal Act

68. Section 106 of the Principal Act is amended by—

- (a) inserting in subsection (1) “or the Board” after “the Minister”,
- (b) inserting in paragraph (b) of subsection (1) “or the Board” after “the Minister”,
- (c) substituting the following subsection for subsection (2):
 - “(2) The Ombudsman Commission may, on its own initiative and without a

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request or authorisation from the Minister or the Board, initiate an examination of a practice, policy or procedure of the Garda Síochána, if the Ombudsman Commission decides that it is necessary to do so for the purpose of preventing complaints arising in relation to the said practice, policy or procedure or of reducing the incidence of such complaints.”, 5

(d) inserting the following subsection after subsection (2):

“(2A) The Ombudsman Commission shall report to the Minister and the Board on the results of an examination initiated under subsection (2) and the said report shall include recommendations for achieving the purpose referred to in subsection (2).”, 10

(e) substituting in subsection (3) “the Minister or the Board” for “the Minister”,

(f) substituting in subsection (4) “the request of the Minister or the Board, or in accordance with the terms of the examination initiated pursuant to subsection (2), as may be appropriate” for “the Minister’s request”, and 15

(g) substituting in subsection (5) “the Minister or the Board” for “the Minister”.

Amendment of section 107 of the Principal Act

69. Section 107 of the Principal Act is amended by inserting in subsection (1) “without delay” after “shall”.

Insertion of new section 108A in the Principal Act

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70. The Principal Act is amended by inserting the following section after section 108:

“108A. (1) Any individual incidence of non-compliance by the Garda Síochána or its members with a Protocol made pursuant to section 108 may be reported by the Ombudsman Commission to the Board and the Minister for its consideration. 25

(2) In its annual report made pursuant to section 80(1), the Ombudsman Commission shall include comments on the general compliance by the Garda Síochána with any protocols made pursuant to section 108.”.

PART 5

REGULATIONS AND MISCELLANEOUS MATTERS

30

General power to make regulations

71. (1) The Minister may with the approval of the Government make regulations prescribing any matter or thing referred to in this Act as prescribed or to be prescribed and in addition to any other power conferred on him or her to make regulations, make regulations generally for the purposes of giving full effect to this Act. 35

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the

purposes of the regulations.

Amendment of section 121 of the Principal Act

72. Section 121 of the Principal Act is amended by inserting the following after subsection (2)(c) “(d) the Board”.

Amendment of section 126 of the Principal Act

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73. Section 126 of the Principal Act is amended by inserting in paragraph (a) of subsection (1) “or Section 93A” after “Section 96”.

Amendment of the First Schedule to the Freedom of Information Act 1997

74. Paragraph 1 of the First Schedule to the Freedom of Information Act 1997 is amended by—

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- (a) deleting subparagraph (5)(a), and
- (b) inserting in subparagraph (1) “the Garda Síochána”.

BILLE

(mar a tionscnatodh)

dá ngairtear

Acht do leasú Acht an Gharda Síochána, 2005 chun neamhspleáchas agus feidhmeanna Oifig Choimisiún Ombudsman an Gharda Síochána a neartú agus do dhéanamh socrú chun comhlacht a bhunú ar a dtabharfar Bord Neamhspleách an Gharda Síochána a mbeidh feidhmeanna faireacháin, feitheoireachta agus maoirseachta i leith an Gharda Síochána aige, chun cuntasacht dhaonlathach an Gharda Síochána a fheabhsú agus chun rannpháirtíocht an phobail a spreagadh agus chun a chinntiú go gcloítear le caighdeáin chearta daonna iomchuí, do dhéanamh socrú maidir le haitéiríocht d'Acht an Gharda Síochána, 2005 a leasú agus a aisghairm agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Teachta Micheál de Bhailís a thug isteach,
15 Bealtaine, 2014

BILL

(as initiated)

entitled

An Act to amend the Garda Síochána Act 2005 to strengthen the independence and functions of the Office of the Garda Síochána Ombudsman Commission and to provide for the establishment of a body to be known as the Garda Síochána Independent Board with monitoring, oversight and supervisory functions over the Garda Síochána to improve the democratic accountability of the Garda Síochána and to encourage community engagement and to ensure adherence to relevant human rights standards, to provide for the amendment and repeal of certain sections of the Garda Síochána Act 2005 and to provide for related matters.

Introduced by Deputy Mick Wallace,
15th May, 2014

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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Preliminary Submission
by the
Garda Representative Association
on the
Establishment of an
Independent Garda Authority

May 2014

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1 Introduction

1.1 As a nation, Ireland has undergone a “cultural revolution” in the last 20 years. Systems of governance and methods of operation that were once acceptable are no longer viewed as fit for purpose. Coupled with this evolution is a move towards transparent and accountable governance. However, the progress towards this principle has been slow in parts; one only has to look at the example of improper regulation in the financial sector and the damage that has done to the economy in recent years. As part of this evolution, the Garda Representative Association, which represents the interest of 10,400 members of An Garda Síochána, wishes to propose the introduction of an Independent Garda Authority that would be responsible for the effective running of the Gardaí and which should usher in a new era of transparency, accountability and professional excellence for the force.

1.2 The need for independence in policing is not a new concept within common law English speaking jurisdictions of Ireland, England, Scotland and Northern Ireland. The desire of the Gardaí to be free from “undue interference” in the discharge of their duties has been noted as far back as 1983 by the then Minister for Justice Mr. Michael Noonan at a GRA seminar on Police authority.¹ Mr. Noonan noted that at that time:

“...there [had] been a growing number of allegations in recent years...of outside influence in Garda affairs. Whether or not these allegations, or a significant number of them, were true, there is no doubt that they did give rise to considerable worry and questioning...[by both members of the Gardaí and, more importantly, members of the public]”²

¹ *Garda Review*, Volume 11, No. 6, June 1983, p. 8.

² *Garda Review*, Volume 11, No. 6, June 1983, p. 8.

- 1.3** The concern outlined above has not altered over the years, namely that interference may erode public confidence in the Gardai and have a serious impact on the way the force conducts its operations. This idea of independence, in particular from governmental interference, was perhaps most succinctly put by the former Judge and Master of the Rolls of England and Wales, Alfred Denning, in 1968:

“...I have no hesitation in holding that, like every constable in the land, [the Police Commissioner] should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State...No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one.”³

- 1.4** Whilst the operational methods of policing has developed in the intervening years since the quote above and the remarks of Minister Noonan, questions of independence have, at times, been harder to address. Recent events such as the Garda whistleblower controversy and the subsequent resignation of then Minister for Justice Mr. Alan Shatter indicate that the balance or authority between the state and the Gardai is still fraught with difficulties. As such, it is the position of the GRA that a new and independent method for ensuring effective policing is conducted within the community and introduced in the form of an Independent Garda Authority.

- 1.5** Beyond the immediate issues raised above, in particular the need for independence from outside influences, it is proposed that a Garda Authority, as a representative body of the varied aspects of Irish civil society, would be in a better position to help the force to adapt to changes in society. This consideration is relevant when viewing the social transformation in Ireland in recent years and the move from a largely

³ *R –v- Commissioner of Police of the Metropolis, Ex Parte Blackburn* [1968] 2 Q.B. 118 at 135-136, Lord Denning M.R.

homogenous society to a more multi-cultural one, not to mention the need to tackle modern issues such as tolerance towards and the integration of minorities⁴, as well as addressing the policing needs of the LGBT community.

2 Independence, Transparency, Accountability, Oversight

2.1 As the proposed Garda Authority will interpose itself between the Government (in particular the Department for Justice) and the force itself, it is necessary to set out the guiding principles upon which any such authority would operate. This is of vital importance if the new Authority is to be seen as valid, effective and representative. These proposed ideals would then, if accepted, form the core ethos of the authority and would be applied in all of its functions.

2.2 Primary amongst these principles is that of independence. In the context of the proposed authority this would be independence from Government. This is desirable on a number of grounds, not least of which is the understanding that governments change, as do their policies yet the requirement for effective and representative policing is a constant in our society. It is not the aim of any proposed authority to remove Government from the discussion on policing, merely that the proper operation of the Gardaí is better served by not being dependent on Government direction.

2.3 This principle is followed by that of transparency. Transparency is a paramount consideration in any democratic society. Not only do the right decisions need to be made in the interest of civil society as a whole, they need to be *seen* to be made. Put simply, the proposed authority must act, insofar as is practicable, in full view of

⁴ Minority issues still plague modern policing in almost every jurisdiction. See generally *Rethinking Minority Attitudes toward the Police*, Weitzer, R., Tuch, S., U.S. Dept of Justice, October 2004 <https://www.ncjrs.gov/pdffiles1/nij/grants/207145.pdf>

public scrutiny. The decision making process must be clear and accessible to the public, the press and to Dáil Eireann. It must also reject any desire for unnecessary secrecy – no sweeping of issues under the rug.

2.4 Accountability is another vital element in the operation of the proposed authority. This is the need to hold the Commissioner of An Garda Síochána in particular and the Gardaí in general accountable to the public and the legislature. In this role of public accountability, the authority can play a part in the maintenance of the already high public approval of the activities of the Gardaí and can act swiftly to deal with transgressions of these high standards of excellence wherever they occur. The Authority would also be accountable to the Dáil and the public for any failures on its part in fulfilling its proposed role.

2.5 The final core principle of the proposed authority is that of oversight. It is proposed that this would be a bidirectional obligation with the Authority having a general oversight responsibility for the daily running of the force and a responsibility to be amenable to the Dáil to account for the activities of the Authority in respect of disbursement of finances, reporting, etc.

2.6 It is proposed that the new Independent Garda Authority would hold these central principles of independence, transparency, accountability and oversight as being the fundamental starting point of all of its operations. This ethos will help to promote openness and community inclusivity in the work of the Authority and it is believed that this will help to make the force more representative of the public as a whole.

3 Necessity for a Separate Police Authority

- 3.1** Calls for the establishment of an Independent Garda Authority have gained greater frequency in recent years. Indeed, shortly after her appointment as Minister for Justice Frances Fitzgerald TD called for significant reform of the Gardaí and stated that she “believed the oversight and governance of the Garda Síochána ‘will be transformed with the establishment of an Independent Garda Authority’”⁵. The primary motivating factor in the desire to establish an independent authority is to prevent excessive political interference in the manner in which An Garda Síochána operates not only within the community but also internally.⁶
- 3.2** The need for a separate and Independent Garda Authority is not only recognised by the GRA but has also been the subject of the recent paper produced by Anne Ferris of the Labour Party.⁷
- 3.3** This report noted that public attitudes towards An Garda Síochána were consistently high and that there was considerable satisfaction in the way the force performed their role in the community. The report noted that in light of this understanding it was necessary to protect the credibility of the Gardaí and that this would be aided with the introduction of “open and transparent oversight and accountability regimes.”⁸ The report defined the role of the proposed Garda Authority as:

“...promoting standards of excellence in all services provided by An Garda Síochána and to ensure that Garda services are delivered within a culture of transparency and accountability to individuals and local communities”⁹

⁵ Irish Times (online edition), May 16th, 2014.

⁶ RTE News Online, 29th April, 2013 <http://www.rte.ie/news/2013/0429/387093-gardai/>

⁷ *Framework for an Independent Garda Authority: A Labour Party Vision*, Ferris, A. et al, March-April, 2014.

⁸ *Framework for an Independent Garda Authority: A Labour Party Vision*, p 2.

⁹ *Framework for an Independent Garda Authority: A Labour Party Vision*, p 4.

The report also called for members of the Authority to be from all aspects of the community and saw it as part of a link between the Gardaí and a dedicated Oireachtas committee on policing.¹⁰

3.4 This comes as relations between the Gardaí and the Department of Justice have been subjected to enormous strain as a consequence of recent political revelations, so much so that one news report defined the Department of Justice as being “utterly isolated” from Garda Headquarters.¹¹ Indeed, as pointed out in the *Guerin Report*, recently published in respect of Garda whistleblowers, the failure by the Department of Justice (and the Minister) to perform an adequate review and investigation of complaints made by Sergeant McCabe was “...a cause for concern”.¹² The failure to properly investigate and, by extension to be held accountable, was noted in the report’s conclusion and is worth quoting in full:

“No complex organisation can expect to succeed in its task if it cannot find the means of heeding the voice of a member whose immediate supervisors hold him in the high regard in which Sergeant McCabe was held. Ultimately, An Garda Síochána does not seem to have been able to do that. Nor does the Minister for Justice and Equality: despite his having an independent supervisory and investigative function with specific statutory powers. The same appears to be true of GSOC, although this review is hampered in making any assessment in that regard by the fact that GSOC has not made documentation available”¹³

¹⁰ *Framework for an Independent Garda Authority: A Labour Party Vision*, p 5.

¹¹ *Irish Times* (online edition), 13th May, 2014.

¹² “*Guerin Report*”, *Guerin SC, S.*, p327.

¹³ “*Guerin Report*”, *Guerin SC, S.*, p331, para 20.11

3.5 The preceding statement exemplifies many of the reasons why an Independent Garda Authority is necessary and relevant to the effective operation of policing in Ireland. It is vital that accountability, independence, transparency and oversight are maintained in respect of all public services, particularly policing. This principle was clearly enunciated in the Canadian *Ipperwash Inquiry Report* published in 2007 which stated, *inter alia*, that the police:

“...provide some of the most basic functions in any state. The police have law enforcement powers that distinguish them from other public servants. They also have special skills and knowledge that quite rightly give them considerable discretion and autonomy in their work. As a result, Canadian democracy depends upon the ability of the police to fulfil their responsibilities to keep the peace and enforce the law equally, fairly, and without partisan or inappropriate political influence.”¹⁴

3.6 Where outside influences are capable of rendering the proper operation of the police service in jeopardy, either through active interference or (as was the case cited in the Guerin Report) a failure to act appropriately and hold accountable wrongdoers, the morale, effectiveness and public confidence of the force will be eroded. This is not to say that Government should be completely obviated from involvement in the role of the Gardaí; it is more a recognition of the delicate balance that needs to be maintained in terms of the governmental/police relationship and the necessity for clear boundaries and limitations.¹⁵

¹⁴ *Ipperwash Inquiry Report*, Attorney General's Office of Ontario, Canada, May 2007. Volume 2, Chapter 12, p 303. http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_2/pdf/E_Vol_2_CH12.pdf

¹⁵ *Ipperwash Inquiry Report*, Attorney General's Office of Ontario, Canada, May 2007. Volume 2, Chapter 12, p 303.

4 Social Contract – Gardaí as Servants of the People

- 4.1** The principle of the social contract is based on the agreed democratic ideal that all state authority derives from the will of the people. That is to say that the general public exercise their democratic franchise and elect people to govern on their behalf. As a part of this process they empower the state to promulgate and enforce legislation - in essence to run the state as befits the interest of the populace at large.
- 4.2** The concept of a social contract is not recent, indeed it finds its most basic postulation in the memorable quote of the political philosopher and mathematician Thomas Hobbes in his work *Leviathan*¹⁶ where he described the process of the people granting the state power to govern on their behalf as a beneficial agreement as life before such an arrangement was “solitary, poor, nasty, brutish and short”.¹⁷ However, despite this somewhat bleak beginning Hobbes and other proponents of the idea of the social contract who followed (such as the French social philosopher Jean Jacques Rousseau¹⁸) believed in a central guiding principle: that for any authority to be legitimate it must be representative of the will of the people. This same principle can be applied to the exercise of Garda powers; it must be representative of the citizens of the state and not seen to be merely the state applying its authority over the populace.
- 4.3** If the principle that the power and authority of the state flows from the citizenry is accepted, then it must also be accepted that all organs of the state must be representative of the public in order to maintain legitimacy. In its simplest formulation this means that the organs of state such as the police, fire service, health care, city and county councils etc, are servants of the people, as is the legislature and

¹⁶ Thomas Hobbes (1588-1679), “*Leviathan*” first published in 1651.

¹⁷ *Leviathan*, Hobbes, T., (Yale University Press, 2010) Ch. 13, p78.

¹⁸ Jean Jacques Rousseau (1712-1778), “*The Social Contract*” first published in 1762.

government of nation. Indeed, in respect of policing this position could be said to be reflected in the mission of An Garda Síochána; *Working with Communities to Protect and Serve*. As such, the legitimacy of the Gardaí can only be enhanced from being seen to be representative of the community and independent from Government which can be changed by way of ballot box, whereas the necessity for policing remains a constant requirement in a civil society.

5 Separation of Powers

5.1 Another fundamental principle of Irish democracy is that of the separation of powers. This provides for the non-interference by any one organ of state with any other organ of state. The separate state entities are defined as the executive, the legislature and the judiciary and each is bound by the Constitution from interfering in the role or operation of the others. A simple example of this is that the Government cannot direct a judge to deliver a particular ruling, or that the judiciary cannot dictate to the legislature how legislation is to be formed – they must remain separate and independent.

5.2 This Constitutional mechanism, provided for in Articles 6, 15.2.1°, 28.2, 29.4.1°, 34.1 and 37 of the Constitution serves as a system of “checks and balances” and ensures that no one element of state authority can wield power over the others. It is a necessary concept for the proper functioning of a balanced democracy.¹⁹ As an extension of this principle it can be inferred that as a function of the administration of justice, the operation of the Gardaí should remain if not separate from Government, at the minimum it should be free from influence and interference.

¹⁹ See generally *Constitutional Law in Ireland*, Casey, J., Round Hall, (2000, 3rd Ed.) at p 221.

6 Need to be seen to be Independent and Ensuring Public Confidence

- 6.1** Independence is defined as that which is not dependent on or subject to the authority of another.²⁰ The concept of independence in the exercise of police authority, a form of autonomy from governmental control, is one that has been successfully applied in many common law jurisdictions and, when coupled with the corresponding principles of oversight and accountability can lead to an improved police force.
- 6.2** The principle of independence between important institutional organs of the State is a long-held and clearly defined part of our democracy. The clearest example of this is to be found in the tri-partite separation of powers that forms the essential structure of the operation of the State. This is the distinct and separate operations of the Executive (Government), the Legislature (Dáil) and the Judiciary.
- 6.3** Another fundamental element of the operation of a democratic state is the trust that exists between the people and those they delegate to exercise power on their behalf. This is particularly important in respect of policing due to the extraordinary powers granted to the Gardaí, not least of which is the power to arrest and detain. Independence in policing is vitally important to protect the positive image of the police within the community and act as a safeguard against the inappropriate use of police powers to achieve purely political ends.²¹

²⁰ *The Shorter Oxford English Dictionary*, Onions, C.T., Oxford/Clarendon Press (1944, 3rd Ed.) at p. 988.

²¹ *Ipperwash Inquiry Report*, Attorney General's Office of Ontario, Canada, May 2007. Volume 2, Chapter 12, p 322.

- 6.4** The ability of the Gardaí to carry out their operations free from undue interference is of central importance to maintaining public trust in the role that the force plays in society. It is important that the proposed Authority is not only independent (in actuality) but is also *seen* to be independent by the public as it is their interests it will strive to represent. This ethos of independence, coupled with the Authority's other core values of transparency, accountability and oversight will help to maintain the high levels of public satisfaction and professional excellence already enjoyed by the force.

7 Independent Police Authorities in other Jurisdictions

- 7.1** The concept of an independent police authority has been applied in various "common law" jurisdictions with varying degrees of success. Perhaps the most relevant in terms of comparison with the proposed Garda Authority are those of Northern Ireland and Scotland.
- 7.2** Independent police authorities operated in England and Wales until recently but have since been replaced by directly elected commissioners. As these commissioners are appointed on a local basis in respect of the individual policing districts such a system must be rejected as being applicable on a national level, as is the case for the proposed Garda Authority. It is also difficult to know what the exact impact of these changes will have on policing in England and Wales as there has not been enough time to gather representative data in respect of this change and thus it is not capable of comparing the new structure in those jurisdictions with that which is proposed here.

7.3 It is also worth noting that the approach to police oversight taken in respect of London has also seen recent change. In January of 2012 the role of police oversight was transferred to the Mayor's Office for Policing and Crime (MOPAC) under the direct supervision of Mayor Boris Johnson (who has since delegated the role to Deputy Mayor Stephen Greenhalgh).²² Whilst the operational goals and responsibilities of MOPAC are broadly similar to those of the proposed Garda Authority and of the examples provided below, it is arguable that the system applied in London is inappropriate in Ireland on a national scale. The primary concern remains the heavy political influence that can still potentially be exerted over police operations where the authority is run by a political appointee.

7.4 In the paragraphs to follow the role and operations of the Northern Ireland Policing Board and the Scottish Police Authority will be discussed. Both were set up to meet specific policing challenges and both have relevance to this jurisdiction. In the interests of contrast there shall also be a discussion of the work of the Police Commissioners of the city of Los Angeles.

8 Northern Ireland

8.1 The difficult history of Northern Ireland and its troubled relationship with its police service has been well documented. It serves as a classic example of the effects of a loss of confidence in the police by a large section of the population. Whilst the catalyst for this loss of confidence and trust in the case of Northern Ireland can be attributed to sectarianism, a lack of effective political representation and uneven distribution of power in the province, it is a chilling illustration of the difficulties posed by any police force in restoring public confidence after it has been lost.

²² <https://www.london.gov.uk/priorities/policing-crime/about-mopac>

8.2 It must also be noted that the unique situation in Northern Irish policing, that of intense divisions between two societal elements, also brought criticism on the regime that controlled the then RUC. It was noted that whilst replacing an old and one-sided regime was a necessary condition for improving police relations (particularly in Northern Ireland); the new regime that is being implemented must “signal a break with the past sufficient to alter the symbolic status of the police.”²³ It can be seen from the following that the Policing Board have attempted to implement this type of regime change, and not without success.

8.3 Established in November of 2001 as a consequence of the Good Friday Agreement, the Northern Ireland Policing Board derives its authority from statute, namely the Police (Northern Ireland) Act, 2000 as amended by the Police (Northern Ireland) Act, 2003 and replaced the existing Police Authority for Northern Ireland. The board’s primary objective is to ensure that the police and their support staff are “efficient and effective”.²⁴ As part of this objective the board is tasked with monitoring the general performance of the police and holding the Chief Constable accountable for the exercise of his duties.²⁵

8.4 The board lists its primary statutory obligations as follows:

- to secure an effective and efficient local police service.
- to appoint (and dismiss, if necessary) the Chief Constable and senior police officers (Assistant Chief Constable and above).
- to consult widely with local people about the policing of their area.

²³ *Policing Under Fire: Ethnic Conflict and Police-Community Relations in Northern Ireland* Weitzer, R. (State university of New York Press, 1995) p 288.

²⁴ *S. 3 (2) Police (Northern Ireland) Act, 2000.*

²⁵ *S. 3 (3) (a) & (b) Police (Northern Ireland) Act, 2000.*

- to set local policing priorities and targets for police performance.
- to monitor everything the police do and how well they perform against the targets set by the Policing Board.
- to publish a three year and annual policing plan which tells local people what they can expect from their police service and report on police performance every year.
- to make sure local people get best value from their local police.
- to oversee complaints against senior officers.
- to discipline senior officers²⁶.

8.5 The board performs the role of oversight in relation to the activities of the PSNI and has no function in respect of day-to-day operations. It does, however in approving the budget allocation to the PSNI.

8.6 The board comprises of 19 political and independent members. Political members of the board, who are elected members of the Northern Ireland Assembly, are appointed under d'Hondt principles²⁷, whilst independent members are appointed by the sitting Justice Minister.²⁸ The board is provided further support in the form of (as of 31st March, 2013) 29 seconded civil servants and 19 directly appointed recruits.²⁹

²⁶ “Statutory Obligations” <http://www.nipolicingboard.org.uk/index/theboard/statutory-obligations.htm>

²⁷ d'Hondt principle are calculated based on a ‘highest averages method’ and are applied to appointments in a proportional representation type political system.

²⁸ <http://www.nipolicingboard.org.uk/index/theboard.htm>

²⁹ Northern Ireland Policing Board Annual Report and Accounts 1 April 2012-31 March 2013, p24.

8.7 In terms of public exposure and understanding of the role the Northern Ireland Policing Board plays in the community, the board has published research in relation to key considerations of the community.³⁰ In answer to the question “have you [member of the public] heard of the Policing Board?” 82% replied in the affirmative. Of those respondents who had heard of the board, 74% thought that the board had helped improve the work of the PSNI. In respect of the question “do you think the Policing Board is part of the Police or is it independent of the Police?” 60% of respondents answered that they believed that the board was independent of the police, a significant figure when one considers the traditional lack of trust in the police force that is still, to some degree, prevalent in Northern Ireland. Other notable statistics are that 76% of respondents believed that the primary role of the board was to “oversee policing and to hold the Chief Constable and the PSNI publically to account” and 77% of respondents believed that the board was working adequately.³¹

8.8 As can be seen, the Policing Board of Northern Ireland has instituted a clear and well structured approach to the exercise of independent police authority in their jurisdiction. When this is viewed in light of the unique difficulties the police face in Northern Ireland, not least of which is building public confidence across all elements of society, the adoption of a transparent and accountable police authority has proven to be a positive change towards sustainable and representative policing for the community as a whole.

³⁰ Northern Ireland Policing Board Omnibus Survey 2013
http://www.nipolicingboard.org.uk/january_2013_omnibus_survey_publication.pdf

³¹ Northern Ireland Policing Board Omnibus Survey 2013 p 14,15.

9 Scotland

9.1 Scotland faces different, and arguably less arduous, problems and considerations when it comes to delivering representative policing within its jurisdiction. Whilst general attitudes towards the role the police play in Scottish society are positive³² there are numerous societal issues such as poverty, prevalence of drug use and social inequality³³ that are important factors in determining police operations within the community.

9.2 The Scottish Police Authority was established as recently as 2012. Authorised under the Police and Fire Reform (Scotland) Act, 2012 it was established to “maintain policing, promote policing principles and hold the Chief Constable to account” and generally ensure that the people of Scotland receive the best policing possible.³⁴ As of April of 2013 forensic services have also come within the scope of the Authority, this being within the purview of the Police Authority Chief Executive. With its introduction, the Authority has sought to update and reform the concept of policing in Scotland, changing it from adherence to its old principles of “guard, patrol and watch” to a more modern understanding of policing by introducing new standards:

“...the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and the Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which is accessible to, and engaged with, local communities, and promotes measures to prevent crime, harm and disorder.”³⁵

³² <http://www.scotland.gov.uk/Publications/1999/03/614d26a7-2942-4ca6-90a7-2829af5764b7>

³³ <http://www.jrf.org.uk/publications/monitoring-poverty-scotland-2013>

³⁴ <http://www.spa.police.uk/about-us/>

³⁵ Scottish Police Authority Strategic Police Plan 2013, p 6. <http://www.spa.police.uk/assets/128635/strategic-police-plan-web>

- 9.3** The board of the Authority, which currently comprises of 13 members drawn from various areas of the private sector and includes former police officers, has no political appointments.
- 9.4** The four main policing priorities set out by the Authority are:
- Making communities safer.
 - Readiness to respond to natural hazards and major events.
 - Delivering an efficient and effective service.
 - Increasing public confidence and reducing fear of crime.
- 9.5** In addition to holding the police service to account and expecting high standards, it is interesting to note that the Authority has pledged to assess its own performance and has expressed a desire to reduce bureaucracy.³⁶
- 9.6** The Authority also has responsibility for funding of the police service. This takes the form of direct funding to the Authority which is then disbursed to the necessary areas of the Scottish police service. It must also be noted that the Government also plays a role in some aspects of funding the police service, in particular the payment of pensions.³⁷
- 9.7** The Scottish Police Authority broadly satisfies the principles of transparency by making its operation and decision making publicly available. As stated in its Standing Orders document “The SPA is a public authority with a statutory obligation to conduct business in public”³⁸ although some matters may be dealt with on a confidential basis, such as information relating to police operations or issues of national security.

³⁶ <http://www.spa.police.uk/performancepages/221302/>

³⁷ Scottish Police Authority Strategic Police Plan 2013, p 14

³⁸ Scottish Police Authority Standing Orders, February 2014, version 1.4
<http://www.spa.police.uk/assets/128635/standing-orders-mar-2014>

10 Los Angeles Board of Police Commissioners

- 10.1** The city of Los Angeles faces many difficulties in providing an effective and representative police force. Issues of race and ethnicity, poverty contrasted with unprecedented wealth and an inequality in public services all serve to place strain on the operation of the city and its police force.³⁹ However, despite these pressures the long serving Los Angeles Board of Police Commissioners have endeavoured to hold the force accountable to the public which they serve.
- 10.2** Policing in Los Angeles has been the subject of oversight by the Board of Police Commissioners for since the 1920's. The board consists of five commissioners who are appointed by the Mayor and confirmed by the City Council and they are limited to serving two five-year terms.
- 10.3** The Board of Commissioners sets the overall policy of the police department whilst the Chief of Police implements those policies and manages the day-to-day operations.⁴⁰ The Commissioners are representative of the Los Angeles community and are tasked with reform, improving the police service, improving public relations, reducing crime and supporting community policing. The current commissioners come from varied backgrounds such as business, non-profit organisations, the legal profession and academia.
- 10.4** As a result of the Rodney King assault, the entire structure of the LAPD, including the Board of Commissioners, was reviewed in Report of the Independent Commission on the Los Angeles Police Department (also known as the Christopher Commission). It concluded that the LAPD should continue under the oversight and control of a

³⁹ Los Angeles Times (online edition) December 27th 2006. <http://www.latimes.com/la-oe-troubles27dec27-htmlstory.html>

⁴⁰ http://www.lapdonline.org/police_commission/content_basic_view/900

“Citizen Police Commission” and recommended increases in both staffing levels and remuneration of commissioners due to the increasing importance of the role.⁴¹

- 10.5** Also notable in the structure of the Los Angeles Board of Commissioner’s operations is the use of an Inspector General who reports directly to the Board. LAPD employees are required to cooperate fully with any such investigation and furnish the Inspector General with any document they request. The Inspector General also has a broad right of access to any LAPD employee for the furtherance of their investigations and the power to subpoena witnesses.⁴²

11 Proposed Garda Authority: its Role and Structure

- 11.1** The core principles enunciated earlier, namely independence, transparency, accountability and oversight would form the central ideal of any proposed Garda Authority. Flowing from these ideals it would be necessary to set out a mission statement or form of guiding document to assist the Authority in its decision-making process. This could take the form of a constitutional document that would be publicly available and can be used to check that the operation of the Authority is in compliance with its guiding ideals.

- 11.2** It would be necessary for any new Authority to be set out in legislation. A similar approach was applied in both Northern Ireland and Scotland with the establishment of their independent policing authorities.⁴³

⁴¹ *Report of the Independent Commission on the Los Angeles Police Department*, 1991, p 208.

⁴² Los Angeles Board of Police Commissioners Policies and Authority Relative to the Inspector General, November 2000 <http://www.oiglapd.org/documents/policies&authority.pdf>

⁴³ Police (Northern Ireland) Act, 2000 and Police and Fire Reform (Scotland) Act, 2012 respectively.

12 Role

12.1 The proposed role of the Garda Authority would most likely be outlined in the legislation that establishes the board. The role proposed in this document would include:

- A responsibility for improving the operational and societal impact An Garda Síochána.
- To support and promote effective community policing.
- To hold the Garda Commissioner accountable to the public and ensuring that the highest levels of excellence are striven for in the management of the Gardaí. Where necessary the Authority may request the Commissioner or any other member of senior management to step down where they have become compromised.
- To manage the financial and budgetary issues of the force.
- To collaborate with communities and special interest groups throughout the country to work towards maintaining the already high levels of public satisfaction with the delivery of police services in the state and to implement strategies to enable the force to remain inclusive and relevant in a rapidly evolving society.
- To promulgate and support the introduction of modern policing policies.
- To provide monitoring of Garda service delivery and to strive to remedy any problems that may arise.
- To be responsible for the transport fleet, ICT budgets, accommodation, equipment and for all procurement and tendering processes. The current involvement of Office of Public Works (OPW) and the Government Supplies Agency needs further evaluation, as they are commonly perceived to hinder rather than assist the effective provision of modern accommodation facilities and adequate fleet, uniform, equipment, and ICT facilities.

12.2 Garda Síochána Ombudsman Commission

Recent controversies have pointed to the lack of adequate oversight of the Garda Síochána Ombudsman Commission and of their resourcing - and ultimately to whom they are answerable.

This should be a function of the new Independent Garda Authority; to whom the Garda Síochána Ombudsman Commission should report. The Garda Síochána Ombudsman Commission should be adequately funded, independently of the Garda Budget to allow all complaints against Gardaí be investigated by the Garda Síochána Ombudsman Commission and not referred back to An Garda Síochána.

The Garda Síochána Act 2005 does not adequately allow a member of An Garda Síochána to make a complaint of treatment by a member of GSOC or the manner in which an investigation is conducted. The Garda Representative Association believes that the Independent Garda Authority should be empowered to deal with such grievances or complaints, especially in light of the stated intention of Government to increase the powers of the Garda Síochána Ombudsman Commission.

The Garda Authority should have oversight and control of the Garda Síochána Ombudsman Commission budget.

- 12.3** Confidential informants should be able to make complaints to the Independent Garda Authority and not to the Garda Síochána Ombudsman Commission. Proposals that a member of Garda rank should be able to make confidential complaints to the Garda Síochána Ombudsman Commission is impracticable and defies logic. The suggestion that the Body (quite rightly) tasked with investigating complaints from the public should also be the forum for a Garda to make a complaint about others is both unsuitable and unworkable. The most appropriate forum for Gardaí to report operational wrongdoing is an Independent Garda Authority.
- 12.4** The Garda Síochána Inspectorate should be ultimately answerable to the Independent Police Authority. Their reports should be forwarded to the Independent Garda Authority whose role it should be to assess and progress the subsequent implementation.

13 Dáil Committee on Policing

- 13.1** It is proposed that any new Garda Authority would report to a Dáil Committee on Policing. Such a committee would be composed of members of the legislature drawn from all political parties so as to be fully representative of the populace as a whole.
- 13.2** The Dáil committee would receive the Authority's annual report and may request the Chairman or Vice Chairman of the Authority to attend a special sitting of the committee for the purposes of asking questions on specific issues that may arise.

13.3 The proposed role of this committee is one of oversight. This would entail examination of the Authority in respect of its disbursement of finances, its interaction with the Commissioner and the content and nature of any reports published by the Authority. It is proposed that the Dáil Committee would operate in a similar manner as Congressional oversight in the United States where the House of Representatives have responsibility for maintaining standards in various governmental and state fields such as agriculture, defence, finance etc. This process has varied from hearings on particular specific issues to general administration of appropriations (i.e. disbursement of state funds).⁴⁴

13.4 Some of the advantages of oversight are:

- Improvement of efficiency and effectiveness of the subject of oversight
- The detection of poor administration and waste in respect of state finances
- The protection of civil liberties and legal rights
- Ensuring compliance with legislative intent
- Preventing executive encroachment⁴⁵

This last point is particularly valid in the context of the proposed Garda Authority as independence from unnecessary governmental interference is one of the primary aims sought to be achieved by the Authority.

⁴⁴ CRS Report for Congress, Kaiser, F. M., January 2001
<http://www.senate.gov/artandhistory/history/resources/pdf/CRS.Oversight.pdf>

⁴⁵ CRS Report for Congress, Kaiser, F. M., January 2001

13.5 It is unexceptional to state that any proposed Garda Authority would of course be amenable to political oversight. It is the proposal of the GRA that, as outlined above, this oversight would be exercised by a Dáil committee as this would prove to be representative of the national interest as opposed to that of the sitting government. Where there is misfeasance on the part of the Garda Authority they can be called to account for their actions by the Dáil and it would also fall within the remit of the committee to keep a check on excessive spending on policing by having a duty to review the annual accounts and report prepared and presented to the legislature each year by the members of the Authority.

14 Composition of the Authority

14.1 It is proposed that the authority would be made up of a board of up to 12 members. These members would be selected based on an application process which would be decided on by that Dáil Committee on Policing. The members would be drawn from all areas of society and ideally would include:

- Members of the business community.
- Legal professionals.
- Financial/Accounting professionals.
- Senior academics and criminologists.
- Members of civil liberties and/or victim's rights organisations.
- Members of organisations that deal with immigrant's rights.
- Members of Garda Staff Associations.

- 14.2** It may also be desirable to appoint a foreign police commissioner to the board to serve in an advisory capacity and to provide a non-Irish perspective to the matters that may arise at Authority meetings.
- 14.3** It is also desirable that the Garda staff associations would be a member of the Independent Garda Authority. As a Garda Staff Association representing members of Garda rank, our input is of exceptional importance to the development of policing in the State.
- 14.4** At the head of this board it is envisaged that the Chairman and Vice Chairman would be elected by the board members of the Independent Garda Authority. They would serve for a predefined term and could then be re-elected by their peers or replaced. It would be for the Chair and Vice Chair to manage the day to day running of the Authority and they would also report to the Dáil Committee on Policing either when scheduled to do so or when requested. They would also be responsible for authorising the preparation of reports, recruitment of support staff for the Authority and would serve as the “public face” of the Authority.
- 14.5** It is paramount that the members of the Authority represent as broad a cross-section of Irish society as possible in order to deliver real community based policing. As noted previously, Irish society is constantly evolving and any representative organisation must be able to keep pace with this evolution. Any failure to do so would render the Authority unfit for purpose.

15 Support Staff

- 15.1** It will be necessary to employ support staff to ensure the proper running of the Authority. Along with general administrative staff it would be necessary to engage other skilled individuals in such areas as research, accounting and public relations.
- 15.2** As to the origin of such support staff, it is most likely that these people would be employed directly by the Authority and not drawn from the civil service. This is for the purposes of maintaining independence and employment flexibility.⁴⁶
- 15.3** These individuals would be appointed to their roles either by the Chairman of the Authority or a senior administrator to whom the Chairman has delegated this responsibility.
- 15.4** It may be necessary for the Authority to appoint an Inspector or Inspectors General who would fulfil a similar function to that outlined above in relation to the Inspectors of the Los Angeles Board of Commissioners. It is proposed that any inspectorate established under the Authority would have a fact finding and investigative role and would operate under the direction of the Authority in respect of matters relating to the day-to-day running of the Gardaí. As such the inspectorate would be tasked with investigating any matter upon which the Authority required further information, e.g.: quality and standards of garda stations and other facilities, the quality of equipment issued to the force, etc.

⁴⁶ The need for civilian staff and not police or civil servants was noted in the *Report of the Independent Commission on the Los Angeles Police Department*, 1991, p 208.

16 Relationship between the proposed Authority and the Garda Commissioner:

- 16.1** The Garda Authority would have an active role in the recruitment of new members to the force. It is proposed that the Authority would also be involved in the appointments and promotions to all ranks including the appointment of senior management positions within the force, with the right to approve and reject such appointments.
- 16.2** As part of the Authority's mission to hold the Commissioner accountable to the public, it is proposed that the Authority would have the power to request the resignation of the Commissioner for performance failures on their part or for any incidences of stated misbehaviour in office. It is envisaged that the Commissioner would have a right of appeal in respect of any such decision, most probably to the High Court (in a process similar to that of appeals made by solicitors or medical professionals who are struck off). This would be in accordance with the established principles of natural and constitutional justice.
- 16.3** Such a power would be vital to the Authority as it must be able to effect real change in garda leadership, if necessary, and that change must be timely. It would prevent situations of uncertainty where disputes arise and subsequently fail to be resolved due to intransigence on the part of the Commissioner.

17 Finance matters

- 17.1** It is proposed that the Garda Authority would be responsible for the disbursement of funding to the Gardaí. This would take the form of the issue of monies from the central fund, as authorised by the Dáil Committee on Policing, to the authority which is then allocated to meet the needs of the force.
- 17.2** This financial autonomy, with Dáil oversight, is an important element of the overall aim of independence of the gardaí from undue influence. If the resources of the Gardaí could be reduced based on political factors then not only does the An Garda Síochána suffer but the public suffers as well.
- 17.3** As with all the other aspects of the Garda Authority proposed by the GRA, independence from external influences remains a paramount concern, hence the exceptional necessity for financial independence.

18 Conclusion

- 18.1** The necessity for police independence from governmental influence plays a central role in the preservation of a representative and democratic civil society. As can be seen in numerous other jurisdictions, the move away from rigid governmental control or influence to a system that promotes stability and representation of all aspects of society has a positive impact on the role the police force plays in the community.

- 18.2** The Garda Representative Association believes that independence, in the form of an Independent Garda Authority, is the appropriate method by which to ensure the already high levels of public satisfaction, professionalism and quality of service are enhanced.
- 18.3** As set out above, the GRA believe that the establishment of any such Independent Garda Authority must be built on the four core principles of independence, transparency, accountability and oversight. These principles must remain at the heart of everything that the Authority does and should serve as the start point of any decision-making process. It is by the implementation of these core principles that the proposed Authority will secure public confidence and maintain its legitimacy into the future.
- 18.4** As An Garda Síochána continues to evolve and modernise in terms of operations, procedures and equipment there is also a necessity to evolve and modernise the manner in which the force is managed. It is clear, not only from the examples set in other jurisdictions but also for the growing desire nationally, that the introduction of an Independent Garda Authority is essential. The GRA fully supports the move towards such independence and is willing to work with all interested parties in order to achieve this aim.
- 18.5** It is the belief of the GRA that if such an independent Authority were to be established, the beneficial impact this would have on policing within the State would be considerable. As a nation evolves it is necessary that all elements of civil society keeps step with this movement and the promotion of a modern, independent, accountable and representative police force is just such a measure.

19 Executive Summary

19.1 Ireland is a changing nation and the role and organisation of its police force has had to adapt to these changes. In recent years there has been an increase in calls for the establishment of an Independent Garda Authority to enable the force to be run separately from Government.

19.2 It is the position of the Garda Representative Association that such an independent authority is a necessary step in ensuring that the force remains representative of all aspects of Irish civil society and that it maintains its already high levels of public satisfaction and legitimacy.

19.3 The move to independent authorities is not a new concept. Some have been in operation with much success for a number of years in different jurisdictions. The move to independent authority has been championed by the GRA since 1979 and in light of recent political events the need for the establishment of such an authority has never been greater.

19.4 The GRA believes that the proposed Authority should operate on the basis of four core values:

- **Independence** from external influence, in particular from Government interference in respect of Garda operations.
- **Transparency** in action and operations. The legitimacy of the Authority as a representative organisation of Irish civil society stems from the confidence the public have in the organisation. The Authority should strive to operate as publically as possible to ensure that it has the full confidence of the people.

- **Accountability** is a crucial element of the operation of the Authority. This means accountability on the part of the Gardaí and the Authority to the public and the legislature.
- **Oversight** of the operations of the Authority by the Dáil is also inextricably linked with the concept of accountability. It is also proposed that the Authority would play a role in maintaining oversight of the senior management of the Gardaí.

19.5 Whilst public recognition and approval of the role of the Gardaí in Irish society has remained high in recent years, there has been a growing consensus amongst political parties and policing representative groups in respect of a move to an Independent Garda Authority. This follows on from recent political scandals, including the Garda whistleblower controversy and the subsequent findings of the Guerin Report. Relations between the Department of Justice and the Gardaí are currently strained as a consequence of this and it is envisaged that the introduction of an independent Authority would obviate the likelihood of such occurrences in the future.

19.6 As has been noted in respect of discussions on governmental and police relations in other jurisdictions, in particular Canada and the *Ipperwash Report*, the police provide an essential service to all aspects of civil society and as such it is necessary that the force represents the jurisdiction as a whole. This can only be achieved where there is freedom on the part of the police from partisan or inappropriate political influences.

19.7 It is the position of the GRA that this principle of public representation is central to any new Garda Authority. In a democratic society power flows from the people to the state and its organisations. In essence the people agree to grant powers to the state on the understanding that the organisations that are subsequently established to exercise those powers do so in the interests of the people. This is the Social Contract.

It is arguable that where the state, or any organ of the state, fails to uphold this principle it will lead to an erosion of public trust. Where this occurs then a failure in legitimacy will swiftly follow. It is clear from this principle that any proposed Garda Authority should always have at the forefront of its operations the consideration that An Garda Síochána is a representative of the people. As such the need for political independence becomes a clear and legitimate necessity.

For the establishment of a Garda Authority to be genuinely independent, the role of the Joint Policing Committees must be reconsidered under such a new structure. For example, if a superintendent and all other ranks are ultimately responsible to an Independent Garda Authority, is it then inappropriate for that the same superintendent to be subject to local political control through Joint Policing Committees. The Association believes not.

19.8 In addition to the concept of the social contract above, it is also arguable that with the principle of the Separation of Powers enshrined in the Constitution and legal process it is a natural extension of that tenet that it was intended that all legal state authority was intended to be separate. Just as the Government cannot dictate to the judiciary in respect of the outcome of a trial, so too should the Gardaí be independent of governmental influence in how they discharge their duties.

19.9 Because of the extraordinary powers of arrest and detention that are granted to the Gardaí for the furtherance of their role it is of vital importance that they and the proposed Authority are seen to be free from governmental influence or control, or indeed any form of external pressure. Without such independence there is the possibility that public confidence in the police would wane and as a consequence of

this An Garda Síochána may simply be viewed as a governmental tool of enforcement, operating purely to meet political desires.

19.10 Other jurisdictions have successfully introduced similar types of police authorities, most notable in recent years are the Northern Ireland Policing Board and the Scottish Police Authority. These organisations strive to preserve the police from external influence whilst holding senior police management accountable to the public. These bodies, comprised of non-political appointees, act as a form of oversight of police activity while allowing the force to do what it does best – uphold the law and protect the interests of the public.

19.11 Both the Northern Irish and Scottish police authorities have broadly similar aims; holding the Chief Constable accountable to the public, making their respective communities safer and ensuring the delivery of effective policing. These goals, coupled with proper administration, serve to boost public confidence in the role the police play in the community.

19.12 The GRA proposes that the Independent Garda Authority would learn from these examples and, in concert with an understanding of the changing needs of society in respect of policing, it would work together with the community to deliver an effective and relevant police service.

19.13 It is proposed that the new Independent Garda Authority would oversee the running of An Garda Síochána and would hold the Commissioner accountable where necessary. It would strive to improve the already high levels of public satisfaction and excellence in the Gardaí and it would be responsible for the disbursement of finances throughout the force.

19.14 In this capacity it is envisaged that the Garda Authority would remain separate from Garda Síochána Ombudsman Commission. The GRA believes strongly that the role of GSOC should be preserved as independent from the Gardaí and the proposed Authority.

19.15 At the head of this board it is envisaged that the Chairman and Vice Chairman would be elected by the board members of the Independent Garda Authority. They would serve for a predefined term and could then be re-elected by their peers or replaced. It would be for the Chair and Vice Chair to manage the day to day running of the Authority and they would also report to the Dáil Committee on Policing either when scheduled to do so or when requested. They would also be responsible for authorising the preparation of reports, recruitment of support staff for the Authority and would serve as the “public face” of the Authority.

The Dáil committee would also receive an annual report prepared by the Authority in respect of its activities and would serve as an appropriations authority in the context of garda finances. In extraordinary circumstances the Dáil committee would be able to seek the resignation of the Chairman or Vice Chairman due to specific failures in management, but in general it is foreseen that the role of the committee would be one of oversight rather than active involvement.

- 19.16** The proposed Garda Authority would be composed of non-political appointees drawn from the worlds of business, the legal profession, financial experts, academics and criminologists, members of civil liberties, representatives from the Garda Staff Associations and members of organisations that deal with immigrants' rights.
- 19.17** It is also proposed that the Authority would employ a number of support staff. These would take the form of administrative, research, accounting and public relations personnel. It is believed that in the interests of independence that such support staff should be hired directly by the Authority and should not be drawn from the ranks of the civil service.
- 19.18** As can be seen from the foregoing, a clear and properly structured approach to the formation of a Garda Authority, which learns from the mistakes and successes of other jurisdictions, can potentially deliver a representative and effective service to the public. Based on the core principles of Independence, Transparency, Accountability and Oversight, it is the belief of the GRA that the proposed Garda Authority will strengthen the role of the force within the community and improve and sustain the already favourable public opinion of An Garda Síochána.
- 19.19** Most importantly, the introduction of an Independent Garda Authority will guarantee that there can be no external influence exerted on the operations of the Gardaí, be it political, financial or any other measure of interference. It is vital for the credibility of the force that it remains to be seen as being impartial and representative of the people. This can be readily achieved with the introduction of an Independent Garda Authority.

Observations of the Garda Inspectorate on the establishment of a Garda Síochána Authority

Background

1. Arising from some oversight difficulties with An Garda Síochána, the Government has decided that an independent Garda Síochána Authority will be established before the end of this year. Consideration is now being given to the Authority's structure, function and linkages required.

Existing police authorities

2. Police authorities have been established in the UK (Police and Crime Commissioners), Scotland (Scottish Police Authority), Northern Ireland, and there are police boards in the USA. Some members are appointed and some are elected.
3. Police Services in Australia, New Zealand, France, Germany and Denmark report directly to the relevant Minister.
4. Police authorities or equivalent entities appear to possess similar functions irrespective of jurisdiction. These range from the appointment of the Commissioner to overseeing operations.
5. Crisis, whether in terms of police agency functionality or misbehaviour, rather than future-thinking, has been the basis for the introduction of police authority-type bodies in those jurisdictions reviewed which possess such an entity.
6. More detailed information on existing police authorities is attached. Functions and structure are dealt with further below.

Irish context

7. The policing "oversight" landscape in Ireland includes:
 - An Garda Síochána corporately and internal units such as PSU
 - Garda Síochána Ombudsman Commission
 - Garda Inspectorate
 - Department of Justice and Equality
 - The Cabinet Committee on Justice Reform
 - Financial oversight mechanisms such as the Comptroller and Auditor General and the Public Accounts Committee.
 - The Joint Oireachtas Committee on Justice, Equality and Defence. (The Committee has been asked by Dáil Éireann to review the effectiveness of legislation related to oversight of AGS. The Committee sought submissions and have met with a number of groups. It has also visited Belfast, Glasgow and Edinburgh to consider potential models for police oversight. An

interim report will be published next week and a more detailed final report will be published in the Autumn.)

- Joint Policing Committees which have varying levels of effectiveness in holding local garda divisions to account.

8. The establishment of any new oversight body will have to take into account the current landscape and changes which may be required to take account of the role and function of the new body.

9. Issues which require to be considered are:

- Functions and responsibilities of GSA
- Appointment and membership of the Authority
- Its relationship with the Government and the Oireachtas, and
- Relationships with GSOC and the Inspectorate.

Functions and responsibilities of the Authority

10. The following table shows the functions carried out by police authorities in other jurisdictions and the body currently holding that responsibility in Ireland.

Function	Current body responsible
Appointment of the Commissioner/Chief Constable/Deputy Chief Constables	Government on foot of a memo from D/J but future appointments will be made by open competition
Setting police priorities	Dept of Justice (D/J)
Setting police budgets	Dept of PER with D/J
Overseeing operations	Very limited judicial oversight
Setting recruitment and testing standards	Public Appointments Service (PAS) to limited extent
Overseeing recruitment	AGS with D/J to limited extent
Assessing police performance	AGS to a limited extent
Dealing with public complaint and disciplinary cases	Complaints :GSOC Disciplinary: AGS
Engaging with the public and communities	AGS, D/J, JPCs
Promoting confidence in the police service	AGS, D/J, JPCs
Implementing reforms	Inspectorate identifying

	reforms AGS, D/J implementing
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11. New legislation will shortly be introduced to strengthen the powers and remit of GSOC. Some of the measures being considered include –
 - Bringing the Garda Commissioner within the remit of GSOC
 - Enabling GSOC to undertake reviews of Garda practice and procedures on its own initiative
 - Enhancing the investigative powers available to GSOC, and
 - Providing for the implementation of protocols entered into by the Garda Síochána and GSOC.
12. The background to the current impetus towards the establishment of the new body clearly indicates that the primary function of the GSA must be the governance and accountability of AGS.
13. It is the Inspectorate's view that it is appropriate for the Authority to have responsibility for the appointment of the Garda Commissioner following an open and transparent process run by the PAS, setting AGS priorities, holding to account AGS performance, engaging with the public and communities and driving the implementation of reforms. The Inspectorate also considers that the Garda Commissioner should have a role in the appointment of Deputy and Assistant Commissioners.
14. The setting of AGS budgets is, and should remain, a matter for government.
15. Operational matters are, and should remain, the responsibility of the Garda Commissioner with appropriate judicial oversight as necessary. One slight complication is that AGS has responsibility for State security and national police operations. This could be addressed by delineating clearly that oversight of State security is the responsibility of a government Minister.
16. Garda public complaint matters should be the sole responsibility of GSOC.
17. Discipline matters should be the sole responsibility of AGS with appropriate policy oversight by the Authority.
18. Recruitment policy and standards should be devised by AGS in conjunction with PAS and the Authority, while recruitment, promotions etc. should be run by PAS.

Appointment and membership of the Authority

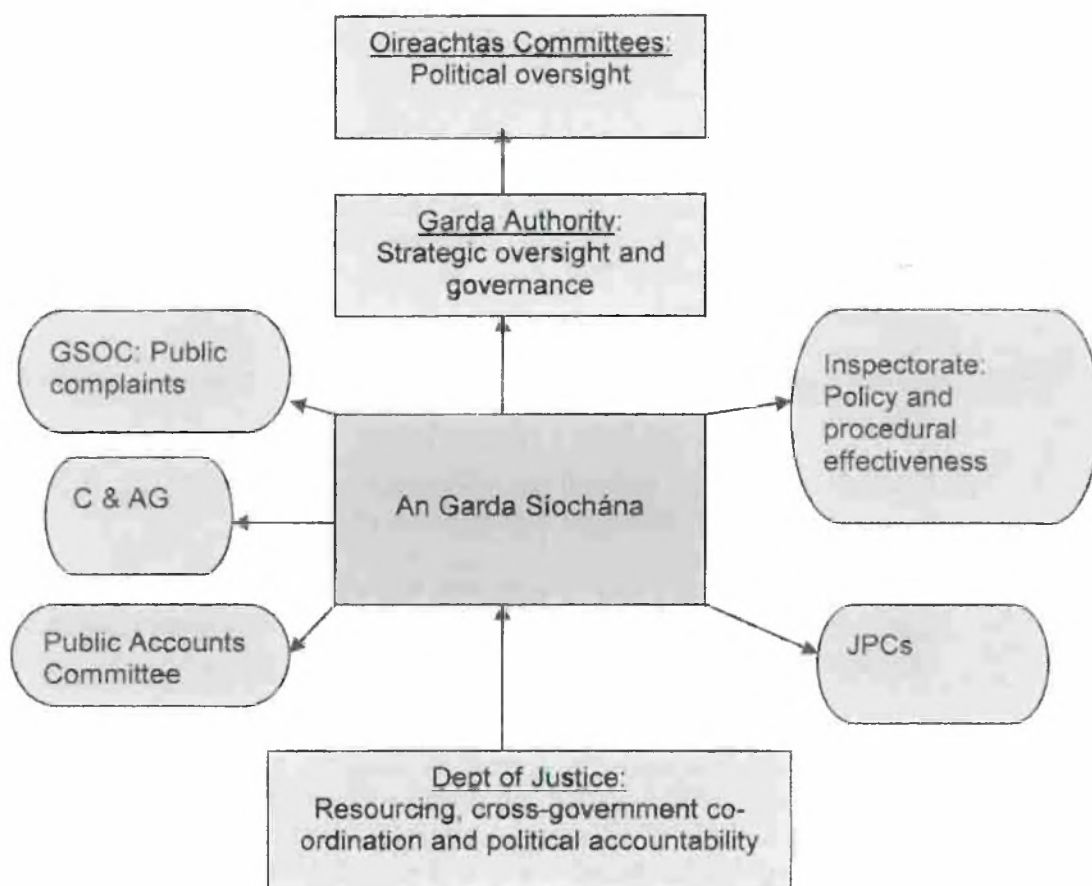
19. The Authority will have an important function and must be resourced and structured to succeed. If the primary functions of the GSA are to be the determination of strategic priorities, performance oversight and public engagement, membership of the Authority should be drawn from those with strong relevant competencies. The key 'fault line' of police

authorities, according to Baroness Nuala O'Loan, is the appointment of people with the relevant competencies.

20. The shared view of Baroness O'Loan and Dr. Vicky Conway is that a Board with approximately 19 members is desirable. The rationale behind this number is that the board should reflect a range of representation and have sufficient depth to have efficient sub-committees to look at specific matters. Baroness O'Loan specifically advises that the Authority should have the capability to challenge AGS and to identify the right questions to ask.
21. The appointment of the Authority members would ideally be dealt with by PAS to ensure transparency and would draw from those with experience in strategic thinking, criminal justice and social policy, governance, finance and standards development and measurement. There may be a need for some political appointment but the chairmanship should be independent.

Relationship with the Government and the Oireachtas

22. There will be a need for linkage between the Authority and the other bodies set out in paragraph 7 above (i.e. GSOC, Garda Inspectorate, D/J Justice and Equality etc.). The linkage needs to take account of the functions and responsibilities of the various organisations. The following flowchart demonstrates a suggested relationship path.



Implications for the Inspectorate

23. The consensus at the Farmleigh seminar was that the Inspectorate should retain its independent role and position. If the functions of the Authority are to be in the region of governance, performance, accountability, policy and process effectiveness, then the Inspectorate could be of great assistance to the Authority if enabled to provide advice and observations from its position as independent police experts. However, it is critical that the Inspectorate is separate to the Authority to enable it to provide a clear, transparent and independent voice, in line with its submission to the Oireachtas Committee on Justice Equality and Defence currently considering amendments to the Garda Síochána Act, 2005.
24. There was some suggestion at Farmleigh that the role of the Inspectorate needs to be expanded. If it is to be enabled to provide speedy and well considered advice and assistance, then indeed appropriate expansion and restructuring needs to be considered.

Submission

25. This paper is submitted for your consideration and the Inspectorate is available for further discussion as required with the Department.

Éimear Fisher
26 June 2014

Police Authorities

Jurisdiction	Police Authority	Other	Rationale	Objective	Elected / Appointed
Ireland	None but one proposed	Reports to the Government	Parliamentary and independent report citing concerns over independence of Minister, Department, police chief and police complaints body		-
Met		Mayor's Office for Policing and Crime (2012)	Police Reform and Social Responsibility Act 2011- inability to address local concerns	Setting Crime Plan Assess how the Met spends its budget Assess how Met performs Hold Commr to account	Elected
Thames Valley Police		Police and Crime Commrs (2012)	"	Set Crime Plan Hold Chief Constable to account Set the budget Engage with the public and communities	Elected
Greater Manchester Police		Police and Crime Commrs	"	Set Police and Crime Plan Set the police budget Appoint and hold Chief Constable to account Provide grants Maintain custody visiting scheme Translate	Elected

				public demands into police action	
Scotland	Scottish Police Authority 2012		2009 HMICS report found problems in local authority police boards	Safer Communities Hazard readiness Efficient and effective service delivery Promoting confidence, reducing fear of crime	Appointed
Northern Ireland		Northern Ireland Policing Board (2001)	Political situation giving rise to Good Friday Agreement and Patten Commission	Reduce crime and fear of crime Set targets Appoint Chief Constable Discipline senior officers	Appointed
LAPD		Board of Police Commissioners (1925)	Extensive and sustained corruption across the agency and politics	Set LAPD priorities Reduce crime and fear of crime Implement reforms	Appointed
NYPD	-	Reports to Mayor			-
Chicago		Chicago Police Board (1861)	Concern over role of Mayor in policing	Adopt rules and regulations for the police Hear disciplinary cases Appoint Superintendent of Police	Appointed
Kansas City		Board of Police Commrs		Operates the City Police Department in accordance with statute	Appointed by the Governor
Milwaukee		Fire and Police Commission (1885)		Oversees operations Sets recruitment	Appointed by the Mayor and approved

				and testing standards Hears discipline and complaint matters	by the Common Council
Toronto		Toronto Police Services Board (1957)	First conceived in 1859 following Catholic worker and Orange Order aligned police and fire fighter riots.	Determines police objectives and priorities Recruits the Chief Negotiates collective agreements Approves the budget Establishes complaint mechanisms	Appointed
Montreal	-				-
Vancouver		Vancouver Police Board (1996)	First board introduced attending formal incorporation of the city 1886	Sets direction and policy Overseer recruitment Sets budget Authority for policy and service complaints	Appointed
New South Wales	-	Reports to Minister			-
Queensland	-	Reports to Minister			-
Victoria		Reports to Minister			-
New Zealand		Reports to Minister of Police			-
France	-	Reports to the Minister for the Interior (1966)			
Germany	-	Reports to Minister of the Interior (1951)			-
Sweden		National Police Board to be replaced by Police Authority in	Leader v Sweden 1987 ECHR case gave rise to a devolution of powers to the	Will hold the police force to account on its activities	Currently appointed

		2015, and Government	Register Board, concern with expansion of police budget by 40% and its employee volume by 26% over years 2000-2010 and Sweden riots in May 2013		
Denmark	-	Minister of Justice identified as 'chief police authority'			-

Notes

1. A body specifically called a police 'authority' is the exception rather than the norm.
2. Other authority-type bodies do appear to exist but with the emphasis heavily upon selection by the national government rather than through a plebiscite.
3. Crisis, whether in terms of police agency functionality or misbehaviour, rather than future-thinking has been the basis for the introduction of police authority-type bodies in those jurisdictions reviewed which possess such an entity.
4. Police authorities or equivalent entities appear to possess similar functions irrespective of jurisdiction.
5. It is not clear that the broader range of activities coming within the remit of some police authority-type entities (e.g. finance, complaints, performance indicators and policing plan) is necessarily a productive situation.

Kansas City Board of Police Commissioners- no information on its operations are directly available from its website. Information is available from the website <http://boards.mo.gov/userpages/Board.aspx?21> outlining that the board meets 12 times, is composed of four members, each appointed on varying durations up to four years in length, and the mayor and demanding a total time commitment of 50 hours (whether per week, month or year is not clear).

Milwaukee Fire and Police Commission- consists of seven part-time Commissioners backed up by a full-time staff of 10 persons. Commissioners are appointed on overlapping five-year terms and hold what it describes as 'regular meetings' in City Hall that are open to the public.

The Los Angeles Board of Police Commissioners- total five members, made up of three ordinary members, one Vice President and one President, serving a maximum of two five-year terms and demanding a commitment of up to 50 hours per week. The Commission holds its weekly meetings in public. The Board is assisted by a full-time administration team.

Scottish Police Authority- consists of 13 people and, as of 2013 when the relevant information was last updated, intended to meet at least six times a year in public with an allowance for closed sessions in some instances. A sub-committee structure also

exists to deal with theme-specific work. The Authority is supported by a full-time staff including a Chief Executive who oversees the management of forensic services in Scotland.

Mayor's Office for Policing and Crime (London)- delegated to the Deputy Mayor by the Mayor, the Office is supported by 76 members of staff. The Office engages in four panels/sub-board events, namely the Joint Investment Board, the Joint Asset Management Panel and a bi-lateral meeting between the Deputy Mayor and Police Commissioner and a stop and search community monitoring network. Decisions on police work are taken in the first three of these initiatives.

Police and Crime Commissioners (Thames Valley and Greater Manchester Police)- the Commissioners decide the direction of police operations, each being supported by an Office of the Police and Crime Commissioner with (18 and 39 in the respective areas). The Commissioner in turn is accountable to the Police and Crime Panel, comprising local councillors (18 in Thames Valley and nine in Greater Manchester) and independent co-opted members (two in Greater Manchester) supported by a local county council. The Panels meet on a quarterly basis and can veto the Commissioner in the case of raising a two-thirds majority on the level of the precept and the choice of Police Constable.

Northern Ireland Policing Board- the nine independent members and ten political members meet monthly with a statutory duty to meet at least eight times each year. All meetings are divided into private meetings involving just the Board, private meetings that extend to including the Chief Constable of the PSNI and, finally, public meetings. A sub-committee structure also exists to deal with theme-specific work. The Board is assisted by a full-time staff of some 55 members including a Chief Executive.

**Mayor's Office for Policing and Crime (MOPAC)
and Policing and Crime Commissioners in England and Wales**

Background

Police Reform and Social Responsibility Act 2011 resulted in the abolition of the Metropolitan Police Authority and the Police Authorities in England and Wales. The act established the Mayors Office for Policing and Crime (MOPAC) in London and Police and Crime Commissioners across England and Wales

Police and Crime Commissioners

A police and crime commissioner is elected to a four year term, charged with securing efficient and effective policing of a police area in England and Wales. The first incumbents were elected on 15 November 2012. Commissioners replaced the now abolished police authorities.

Scotland and Northern Ireland

Policing in Scotland and Northern Ireland has been devolved to the Scottish Parliament and Northern Ireland Assembly, respectively. In Scotland, the Cabinet Secretary for Justice serves in a similar capacity for Police Scotland while in Northern Ireland, the Minister of Justice fulfils a similar role for the Police Service of Northern Ireland.

Core functions of Police and Crime Commissioners (PCC)

The core functions of PCC are to secure the maintenance of an efficient and effective police force within their area and to hold the Chief Constable to account for the delivery of the police and crime plan. PCCs are charged with holding the police fund (from which all policing of the area is financed) and raising the local policing precept from council tax. PCCs are also responsible for the appointment, suspension and dismissal of the Chief Constable and in London this extends to the Deputy Commissioner.

Police and crime plans

Shortly after election to office, PCC must produce a "police and crime plan". A plan must include objectives for policing, what resources will be provided to the Chief Constable/Commissioner and how performance will be measured. Both the PCC and the Chief Constable must have regard to the police and crime plan in the exercise of their duties. The PCC is required to produce an annual report to the public on progress in policing.

Police funding

PCCs hold the 'police fund', from which all policing is financed. The bulk of funding comes from the Home Office in the form of an annual grant (calculated on a proportionate basis by the Home Office to take into account the differences between the 43 forces in England and Wales, which can vary significantly in terms of population, geographical size, crime levels and trends) and PCCs can also set a precept on the Council Tax to raise additional funds. Plans under the Localism Bill will trigger a referendum where a Commissioner intends to increase the precept by an amount deemed to be excessive (as defined in the Localism Bill). It will be the PCCs responsibility to set the budget for the force area, which includes allocating enough money from the overall policing budget to ensure that they can discharge their own functions effectively.

Police and crime panels

The Police Reform and Social Responsibility Act 2011 established police and crime panels within each force area in England and Wales (excluding Greater London).

These panels consist of at least one representative from each local authority in that area and at least two independent members co-opted by the panel.

Panels are responsible for scrutinising PCC decisions and ensuring this information is available to the public. They must review the PCCs draft police and crime plan and draft annual report before publication. A police and crime panel may require the attendance of the PCC or a member of their staff at any time and may suspend a PCC from office where they are charged with a serious criminal offence.

Holding the Mayor to account in London

A London Assembly is in place to hold the Mayor to account for the effectiveness of the Mayor's decisions. The Assembly is described as a 'Watch dog' of 25 elected members from the main political parties. The assembly can investigate and review the work of MOPAC. The assembly has a wide remit, which includes Regeneration of Stadia, London Underground, Diversity of the Met, Health Services in London, Safeguarding Children and taxis and private hire. The Assembly hold both private and public meetings and exist to bring the Mayor and the Met to account.

Greater London Authority

Established in 1999 it consists of two elected parts the Mayor (executive powers) and the Assembly (to scrutinise decisions of the Mayor). The GLA has responsibility for strategic planning, police and fire services, transport and economic development. The GLA serve both the Mayor and the Assembly and lead on corporate roles such as spending money wisely, maintaining high standards, governing the organisation and overseeing the election of the Mayor and Assembly members.

Relationship between the Mayor and the Met Commissioner

- Mayor can hire and fire a Commissioner
- Mayor ensures efficiency and effectiveness of policing
- Mayor can award grants towards tackling crime and disorder
- Commissioner has responsibility for operational decisions
- Mayor and Commissioner agree the budget
- Mayor sets policing priorities and publishes a policing plan
- MOPAC has a challenge process to hold Met to account for policing
- MOPAC hold live televised monthly meetings with the Commissioner
- Mayor has a role to engage other partners.



Garda Síochána Retired Members' Association (GSRMA)

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Website www.gardaretired.com

30th. May 2014

Justice Reform Unit,

Department of Justice and Equality,

51 St. Stephen's Green,

Dublin 2.

Government Consultation on Justice Reform - Proposal to establish an independent Policing Authority

Consultation - Proposal to establish an independent Policing Authority.

Dear Sir/Madam

The Garda Síochána Retired Members Association (GSRMA), wish to make the following proposals in relation to the establishment of an Independent Policing Authority, as published in relation to the raft of proposals all linked to Justice Reform.

I set out hereunder The Aims & Objectives of our Association as provided for within our own Constitution.

The Association:

- (a) The name of the Association shall be the Garda Síochána Retired Members' Association and its abbreviation GSRMA shall be construed accordingly
- (b) The Central office of the Association shall be located at such a place as the Central Committee from time to time determines.
- (c) Subject to his/her consent the Garda Commissioner shall be the patron of the Association in keeping with established tradition.

Aims and Objectives:

The objects of the Garda Síochána Retired Members' Association shall be: -

1. To make representation to improve the social and economic status of members.
2. To voice the views of the members in all matters affecting their pensions and Garda Superannuation Schemes.
3. To disseminate the views of members, to lobby on their behalf and to promote their aims.
4. To represent members on the boards of St. Paul's Garda Medical Society, the Garda Benevolent Trust Fund and any other body or group in which its members may have an interest.
5. To promote welfare of the members and to represent them on the committees established for that purpose.
6. To negotiate group schemes to meet the requirements of the members.
7. To promote the members work prospects by way of vocational training and a jobs liaison service.
8. To enhance the organisational strength and national image of the Association by means of a magazine, hand-outs, recruitment drives, establishment of branches and the development of a veteran's society dimension
9. To affiliate with kindred retired associations and national federations for the purpose of lobbying government and its agencies in order to advance the causes of the retired community in general.
10. To disseminate information concerning the operation of the GSRMA amongst its members at all times thereby providing an equitable and transparent means of consultation and representation.
11. To liaise with Garda Staff Associations and other Police Associations both serving and retired in a spirit of fraternal co-operation.
12. To liaise with any other Associations and Societies as the GSRMA Central Committee deem desirable in order to advance the interests of the membership.
13. To promote and develop good relations between the GSRMA and the media.
14. To develop a spirit of friendship and camaraderie at branch, regional and national level.
15. To pursue changes in legislation for the benefit of its members in or towards achieving any or all of these objectives.

Garda Síochána Retired members Association represent approximately 9,000 retired members of An Garda Síochána, of all ranks.

This Association has been in existence since 1961, with the mandate to represent the interests of retired Gardaí, in the areas of welfare and pension conditions.

The proposal to establish a Police Authority will have an impact on our position as pensioners of An Garda Síochana, for the following reasons:

Support in relation to all welfare issues is provided by Welfare services of An Garda Síochana, to all retired Gardaí;
Members of Garda Síochana Retired Members Association are nominees to Divisional & National Welfare Committees;

Pension payments to retired Gardaí are indexed linked to the pay and conditions of serving Gardaí;

The Garda Síochana Retired Members Association are represented on the Garda Commissioner's Joint Consultative Council, which includes representatives of all staff associations of Garda personnel – dealing with issues ranging from pensions to welfare.

While we are retired Gardaí we have a lifelong experience of policing, at all levels. We take an active part in social and community activities, associated with our former role as members of An Garda Síochana. As a consequence we have an intrinsic relationship with An Garda Síochana.

We request that you engage with the Garda Síochana Retired Members Association, when developing the proposed Police Authority model for Ireland, because we are satisfied that can make a positive and constructive contribution to the future policing, based on the wealth of knowledge and experience we hold.

We also respectfully suggest that this Association have a representative on the Policing Authority Board, and we accordingly apply for such representation.

Likewise in your analysis of the various submissions you will receive we feel that an oral presentation from a small delegation from this association would pay dividends in the creation of the proposed Authority.

Yours sincerely

Paschal Feeney
Acting General Secretary.

Justice Reform Unit,
Department of Justice and Equality,
51 St. Stephen's Green,
Dublin 2.

To who it may concern

Submission to the Government Consultation on Justice Reform regarding its proposal to establish an independent Policing Authority

I make this submission as a private citizen and I wish to submit the following concerning this matter:-

1. I support the proposal to establish an Independent Policing Authority.
2. I propose the in order to be responsive to local needs that this authority be regionalized to correspond with Garda regions. That is there should be a separate authority for the Dublin Metropolitan Region, a second authority for the Eastern region as so on for the other regions namely the Northern region, the Southern region, the South-Eastern region and the Western region. This proposal would build on the current joint policing committees.
3. The Regional Policing authorities should be structures so positions could be reserved for members from each local authority. (see below)
4. Each Regional Policing authority should select a single member from their authority to sit on an overarching National Policing Authority. A clear division of functions should be drafted outlining the limits of the power and responsibility of both the Regional and the National Policing authority.
5. I further propose that instead of appointing member to these authorities they should be directly elected by the citizens of the area which they will represent. To achieve this they should be elected

members of the Local Authority. To achieve this, an additional position on the local authority suitably recompensed could be created. That is this position would be filled by a person who would be a member of the local council. This councilor would have a reserved remit to sit on the Regional Policing Authority. Such an election could be legislated for to coincide with the same time as Local elections.

6. Each regional authority should be responsible for regional policing plan which could be drafted annually or bi-annually in conjunction with the regional Assistant Commissioner and or Divisional Chief Superintendents.
7. Each regional authority should hold public either biannual or quarterly meeting at which an citizen should be permitted to raise issues or to make proposals which can subsequently be decided upon by the regional police authority provided it is in accordance with priorities or initiatives decided upon by the National Police Authority.
8. The training of Gardai should continue to occur at the Garda College Templemore and once trained Garda should be assigned to a station as is the current practice. Their wages should be met from central funds. The Regional Police authority should be given a role in supplying accommodation, training facilities, equipment and vehicles which would be used within the functional area of the Regional Policing Authority.
9. Such equipment should be centrally procured but should be 'sold' by central stores to the Regional Policing Authority.
10. The local authority should be given a non Executative function to maintain the regional section of An Garda Síochána similar to its role in respect of the Fire service. The National Police Authority should hold a veto power over any expenditure which is deemed to be excessive.
11. The Regional Police Authority should be responsible for setting a budget which is proportionally split between local authorities in accordance with demographic trends in population distribution.
12. The Regional Police Authority should play a role in setting the policing priorities and the strategic direction of the region which they represent. They should be empowered to scrutinize performance outcomes and to make submission to the Garda commissioner regarding this scrutiny. They should be required to prepare an annual report outlining the priorities and the review of the priorities. The ultimate direction of the service should continue to rest with the Garda Commissioner.
13. The maintenance of discipline should also continue to rest with the Garda commissioner but each Regional Policing Authority should be empowered to make submission in any disciplinary proceeding. The results of any disciplinary proceedings should be published in the Regional Policing Authorities annual report.
14. Goals and priorities regarding each region should set as the result of a public consultation process and through submission from Community engagement. Such Community engagement should be facilitated through existing and future Gárda Neighborhood watch schemes.
15. The Regional Policing authority should also be empowered in establishing that funds expended locally are prudent and represent value for the money being expended. Appropriate information should

be included in the annual report of that authority.

16. The current interview system for promotion should be discontinued for member up to the rank of inspector and it should be replaced with an externally accredited system through national universities with assessed courses that contain modules relevant to core competencies or skill. Once the member has passed the examinations they should be eligible on a merit basis for promotion.
17. Each regional authority should also be tasked with a role in the promotion of Gardai up to and including the rank of Inspector. A member from each Local authority in conjunction with a local Divisional Chief Superintendent, a member of either the local legal profession or a member of the Judiciary should be tasked with the responsibility to manage the promotion process. Personal interviews should not take place for positions at this level. Appointment should be on merit and an appeals mechanism should be created through the Office of the Commission for Public Service Appointments.
18. The National Police Authority could be tasked with a role in the promotion of Gardai up to and including the rank of Deputy Commissioner. Appropriate 3rd level accredited management qualifications which should include aspect of Project management, Human resource management, Communication, Criminology and Conflict resolution should be an eligibility criteria for promotion at these ranks. Additionally a personal interview should be used to select people for these positions. Interviews for members to the positions of Assistant Commissioner and Deputy Commission should be opened to both the press and members of the public.
19. The Garda Commissioner should be appointed following competitive interview by the National Police Authority with the addition of the Minister for Justice, the chairperson of the Garda Síochána Inspectorate and the Chairperson of the Garda Síochána Ombudsman commission. Each person should have one vote and the candidate who gets the majority of votes should be appointed Garda Commissioner.
20. The members of the regional authority should be responsible and answerable to their respective Local Authority and should be capable of being sanctioned following a Majority vote of the National Policing Authority.
21. The National Policing authority should be individually and collectively answerable to the Minister for Justice, the chairperson of the Garda Síochána Inspectorate and the Chairperson of the Garda Síochána Ombudsman commission.

Thank you for your time and I urge you to seriously consider my submission when deciding on the future direction of the Garda service. Should you require clarification of any of the points of my submission please do not hesitate in contacting me and I will endeavor to provide clarification if necessary.

With ref to the new policing board
I as a man on the street would be very interested in taking part.
I think our police force has to look forward.
We need new ways for the police to police themselves
Thank you

Work Like You Don't Need The Money.
Love Like You've Never Been Hurt.
Dance Like Nobody's Watching.
Sing Like Nobody's Listening.
Live Like It's Heaven On Earth.
And Smile ... It get's to them..

Government Consultation on an Independent Policing Authority.

Cllr. Tim O'Leary to: justicereformsubmissions

09/05/2014 19:02

I fully support the establishment of a Police Authority. It is vital to efficient policing and will create a buffer between it and the government.

I served in The Garda Síochána for 36 years retiring as a Sergeant at Listowel in 1997. I was Kerry Branch Sec. of The Association of Garda Sergeant & Inspr's from 1982 to 1997. I am an elected member of Listowel Town Cl. for the past 15 years.

The Garda Force is badly in need of an overhaul to up-date practices and procedures and make it fit for modern day policing. The force I left was riddled with cronyism and favouritism in relation to appointments, transfers and promotions. This led to poor morale and cynicism. Staff associations were just about tolerated and not properly engaged with by management for the betterment of the force and the well being of personnel.

The P/Authority should have control over promotions. Be accountable to the public and government. The ombudsman and inspectorate should be within its remit. Distinctions should be made between a police service, intelligence gathering and state security. Good relationships with the public should be maintained and developed. No move be made towards a police state. Common sense law enforcement practices to be fostered. Good relationship with Defence Force

Cllr Tim O'Leary, Ballygologue Road, Listowel

Government Consultation on an Independent Policing Authority.

Cllr. Tim O'Leary to: justicereformsubmissions

09/05/2014 19:14

addendum

membership of the p/auth. should be invited from the public with a particular emphasis on community service and practical experience of dealing with people. Made up of probably 15 persons and not to be too unwieldy. An annual report to issue.

1. Title to be "SERVICES" Not "FORCE". 2. The Commissioner to be elected by public.3. Involve Psychiatric Nurses with the services on call or preferably attachedI have been called to assist Metropolitan police in a psychiatric situation.It can save lives and money.It is a confidence earner as well,and helps get a real handle on cases where mentally ill are involved.I have had over 40 years in nursing and management.Am now retired.

To Whom It May Concern,

My submission is that an independent policing body should have representation from community groups.

In Ireland today, local community members do not know the Gardaí in their town like they once did, the Gardaí are now strangers, which causes distrust and raises questions.

This distrust has, in many cases, lead to a lack of confidence in the Gardaí, who preform a vital and thankless job.

I believe as part of the role of An Gardaí they must ensure they are known to the locals, as much as on a first name basis and interact with An Gardaí on a regular basis to build trust.

Also, a better knowledge of the locality will be vital to An Gardaí in dealing with crime and crime trends, both officially reported and unreported.

My idea is that all members of An Gardaí Siochana should give 1-2 hours per week, paid, working with local residential and community groups. For Example, our specific area of Roscrea has formed a Community Alert Committee for 4 housing estates combined and were lucky to have a very active member of An Garda Siochana who is now known on a first name basis and we will be introducing him to the residents, which will build trust with more than 700 local residents who will, in the near future, have a member of our towns Gardaí that they will have trust and confidence in which will build trust to the entire force, in contrast, another local group we are helping, on the other side of Roscrea, were initializing a community alert when the member of An Gardaí told their committee it was "going to cost a fortune" and in no way was he going to go to doors, the immediate reaction was to tar the force as "all the same", this is a simple measure than can be avoided.

This community initiative needs to be structured and have oversight to ensure it is being done effectively and that the independent body can ensure the confidence in An Gardaí is being restored.

A Community Committee with no more than 10 representatives, serving 2 years, should be formed as part of the Independent Policing Authority where the committee can create codes of best practice, initiate "community projects" with An Gardaí and review the progress with a method of enforcing the initiative. The Community Committee should be

able to enforce this community approach and be directly connected to the overall policing authority. (With the possibility of the Chair of the committee being a committee member to the authority)

I believe as part of your review this initiative will be vital as confidence can only be restored with trust and it is impossible to trust those you do not know.

Please accept my submission, my details are below if you wish to discuss this further, thank you:

I would like to make some points and recommendations on a new police force that is required for Ireland.

Having traveled around the world I realize nobody has a perfect system. However our force is quiet small and we could if there was a will to fix this force and instill public confidence.

I would like a strong, fair and uncorruptible force that will attract the right candidate for the job.

We have too many Guards that are in the job for the wrong reason i.e cushy number and they become resentful when they find that the job is no bed of roses. Any person in the wrong job is a liability.

It should be an offence to get a ticket or charge dropped.

There should be an independent body that oversees the guards and they should have the powers of investigation when things go wrong.

When a recruit goes to Templemore he should be told the following

1. Don't believe what your colleagues tell you .
2. If you are fair and honest and work hard you will do well.
3. Promotion is given on meritocracy ie if your good you will be promoted and not because its your turn.
4. Every recruit is given a job description and is of no doubt what are his/her expectations.
5. You work for the people of ireland and you may be fired after two verbal and one written warning.
- 6 You never cover up anything if you do you will be fired.
7. You will be assessed every year on your performance as is the norm in all walks of life.

I am in my forties and anytime i need the help of the Gardai for things, the feeling i get is that its too much trouble to do the little things but anyone will tell you that take care of the small stuff and the large things will be reduced. The fixing of tickets by Guards has been rife all my life and I never considered going to one with a problem because its wrong. I hope that this will be stamped out and anyone caught doing this will be fired.

We need a proper functioning police force that serves the needs of the people and not their own needs.

Thank You

Public Consultation on Establishing an Independent Policing Authority

Dear Sir/Madam

When first seeing the Public Consultation on Establishing an Independent Policing Authority I have to think that this Country needs a better organised Police Service throughout the State as the Criminal seems to be have a free hand to do what they like and please see attached ideas for the Policing of Our Country.

We have to be mindful of forming this Independent Police Authority that some time in the future we may have an all Ireland Police Service and with that in mind this Authority has to be imaginative and far reaching and the people on this Board have to have knowledge of how the police work in this state.

In my opinion the Garda Commissioner had too many officers under his/her control and therefore the job is too big just for one person and to many areas of operation and thats where my policing ideas com from.

This Anthority can't be political and we must have the proper people in this organisation.

The Policing Authority functions responsibilities are:

- Independent of the Government.
- Responsible for promoting all Officers to the rank of Chief Superintendent and Assistant/Deputy & Commissioner level.
- Responsible for Sacking all Officers to the rank of Chief Superintendent and Assistant/Deputy & Commissioner level.
- Regrade the police Force to include the ranks of Chief Inspector & Corporal rank so there is more supervision in smaller stations.
- Responsible for filling of all Officers to a second tier Police Service if one is ever introduced.
- Responsible for all Police Service in the State i.e. Customs, Garda, Military Police, Airport Police, Harbour Police, Luas Security, Health & Safety Authority(for Investigating side Air Crashes etc) .

The Policing Authority Appointments & Membership:

- **Deputy Commissioner of Gardai**
- **Chief of Airport Police**
- **Provost Marshall of the military police of the Defence Forces**

- Judge Advocate of the Defence Forces
- Director General/Civil Defence Officer of the Civil Defence
- Chief Justice
- Head of the Garda SOC
- Head of the GS Inspectorate
- Ceann Comhairle of Dail
- Ceann Comhairle of Seanad
- Citizen of the State of good standing

The Policing Authority Relationship with Government:

- Ceann Comhairle of Dail
- Ceann Comhairle of Seanad

In my opinion this is as much input as the Government of the day needs.

The Policing Authority Relationship with GSOC & Garda Inspectorate:

The head of both organisation have a seat on the Police Authority.

This is my submission for the Policing Authority.

Regards

Submission

I have some ideas for Policing in Ireland for the 21st Century in the EU.

- Reduce the Gardai to 10,000 members.
- Introduce a new Local Police Force dealing with Local Issues and leave the serious Policing to An Garda Siochana.
- This would be in line with most other Eu countries.

THE BASIS IS AS FOLLOWS:

1. The 3,000 less Gardai could pay for approx 5,000 Local Police/Peace Officer and only the cream of this Police Force can apply for An Garda Siochana so the country is getting the best Police Officers.
2. Where do these Local Police/Peace Officer Force come from Park Rangers ,Fishery Inspectors,Former FCA/RDF Military Police,PDF Military Police (retired) ,Traffic Wardens,Civil Defence Members,Environment Wardens,Reserve Gardai or Retired Gardai,Airport Police,Harbour Police etc who wish to have a Local Police Career at less pay than An Garda Siochana.

What does this achieve:

- An Gardai Siochana can concentrate on Major Crime
- Local Issue can be dealt with by this new Force Unarmed (but can get advice from An Garda Siochana)

What work can they preform:

- Litter
- Airport Policing & Harbours
- Policing of Waterways
- Parking Violations

- Street Patrols
- Hospital Patrols
- Park Patrols
- Directing Traffic for sporting events
- Speed Camera work
- Transport Police :Trains,Luas,Buses,Lakes & the Islands off the coast.

Where can they train:

Columb Barracks Mullingar still in State Hands and still used by the Garda Armed Response Unit would be ideal as members up to 300 can be housed in this Barracks for emergency or crowd control work in Dublin.

Police Forces of the EU:

Ireland – Garda + (Military Police Defence Forces only)

UK- 43 Forces + Transport Police + Border Control

France - Gendarmerie + National Police etc

Belgium - Federal police + Local police of Belgium etc

Spain – Local Police + Guardia Civil etc

Italy – Carabinieri + Polizia Locale etc

Maybe Ireland Needs a second Police Force for Local Policing/minor police work.

The Garda should be for Serious Crime and investigations.

Canada have Federal Police Serious Crime, Sherrifs Dept for prisoner transfer etc, Peace Officers local policing unarmed, Border Agency & Railway police. Maybe they should be looked at.

IRELAND NEEDS CHANGE AND IN CANADA RETIRED FEDERAL POLICE & MILITARY ARE SELECTED FOR PEACE OFFICER ROLES.

My submissions under the headings are as follows:

Functions and responsibilities of a Policing Authority.

- To secure an effective and efficient national police service for this country.
- To have the statutory power to appoint and dismiss the Commissioner ,D/commissioner and assistant Commissioners
- To consult widely annually with local people about the policing service needs.
- To set local policing priorities and targets for police performance
- To monitor overall police performance, development, and to make recommendations
- To publish a three year and annual policing plans and report on its effectiveness
- To make sure local people get best value from their local police service.
- To oversee complaints against senior officers.
- To oversee discipline/sanctions of senior officers.

- To make recommendations on promotions on all ranks.

Appointment and membership of the Authority.

- Membership no longer than 5 years on the authority.
- It should represent all matters of policing such as governance, finance, resources and training.
- All aspects of Irish society should have a representation.
- Should be more independent than political.
- Appointed by the Taoiseach of the day.

Its relationship with the Government and the Oireachtas.

- Should be answerable to the Public Accounts Committee.
- Should have overall control of the Garda Budget.
- The Director of Finance in An Garda Síochána must be answerable to the Authority.

Should be governed by a set of Standing Orders and incorporating the Code of Conduct for Board Members and Role of Committees similar to that of the Northern Ireland Policing Authority.

Implications for the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate.

- Both bodies should report directly to the Police Authority and should continue with their respective work.
- Both bodies should report separately annually to the Authority.

Again thank you for the opportunity and I am available for an oral submission if required in the future.

<http://www.ifsecglobal.com/body-worn-cameras-herald-new-era-surveillance-police-accountability/>

note its reported effects..

Hello,

My friends tell me that I am wasting my time trying to make any suggestion to Government 'They don't listen and don't seem to care , they get their pay at the end of the day, and no one wants to ruffle any feathers. so far they appear to me as being right. but in this time I have a feeling that maybe it might be forwarded through to the right person and that I might receive a call to clarify or explain further anything not understood below;

This is an attempt to tackle the seed to much of our problems including the reasons why are building bigger jails and fancyER court houses.

In IRELAND, in reality, The bartenders and anyone serving alcohol are freely able to serve already intoxicated customers without fear of reprisal / sanction.

One country I've lived in before, fines the server PERSONALLY, fines the establishment AND enforces shutdown for a 14 day period.

After seeing the effectiveness of this enforcement back in 2000, I've made the suggestion on many occasions to different departments here but without success.

The people in these departments seem to me that this would be too much trouble to even consider.

But I beg you to consider the out-weighing benefits to Ireland if such policy was ENFORCED, I believe there maybe something in place already?

What would happen to the supermarkets and petrol stations (unnecessary vendors) if there was one or two shutdowns? The appetite for this product line would be less. Hence bringing the supply back to the original vendors. Pubs could reopen their off-licence areas and help their trade. they would have better CONTROL on its sales. There are several other benefits

Pair this policy with the alcohol minimum unit pricing (or better 'SET pricing' as suggested to minister White) and there is an opportunity to upset the source problem to many other problems in Ireland.

on a second suggestion:

the Garda could do with being allowed to use stun gun/batten weapons. As the current policies let unfortunate situations flourish on our streets and more.

- I have a an idea, rapid response , reporting and transparency concept for its more simplified application. That I'm willing to share with the right person.

Thank you for reading,
Please send me some feedback
Regards

All cases available to all people in Ireland
on internet.

All cases must be on television.

No case against the public sector can be refused
an investigation.

Will pay all costs and losses suffered by victim.

Do criminal court cases against public sector workers.

To dismiss public sector management who do not
train and discipline their staff.

Attention of
Justice Reform Unit.

My submission is somewhat diverse from the four categories outlined, but, I feel that under category A, I can contribute some ideas to assist with the development of the Gardá service.

One of the main and most controversial issues that impedes every organisation and administration is the cancer of overtime. The use of overtime payments for additional and unforeseen requirements is unacceptable in the new era. Other areas such as change within the system are affected, in house industrial unrest, increased sick leave are all the result of overtime.

The Gardá service must be completely reviewed, all aspects of the service be examined, the rostering of all grades requires in depth analysis, a multi-rostering system be designed to meet local requirements and provide cover for leave. One roster for all is impractical, it generates overlapping, unsocial aspects and generally discontent.

Along with roster examination of the system:-

- All staff must be required to clock in and out for duty.

- All tasks / posts are aligned to the time recording.

- All time recordings are directly electronically transferred to payroll

- Killarney.

- Only exceptions on the day require attention, serious reduction of administration.

- A full HR policy is devised with staff availing of sick leave.

- A standard built in agreement on staff late attendance for duty.

These are some issues that must be standardised, administrators must be taken out of decision making process in these areas. Time saved and the staffs are dealing with policy rather than local managers.

All sections are independently operating and the experience from introduction of an annualised hour's system changes the ethos of the workforce, allows for change within the organisation, reduces sick leave, better control of annual budgets.

The change and implementation of a new programme will not be a simple process, the benefits for the staff and the service would be in time very positive. From experience, organisations that have completed a full examination and

transformation of the systems would not return to the use of overtime as a payment for working extra hours or extended shifts.

The problem in the Garda Síochána is a breakdown in discipline linked to a flawed promotion system. Basically, if a Sergeant wants to get promoted to Inspector s/he does not rock the boat by reporting breaches of discipline to members up the line.

When a breach is reported the Superintendent will (likely as not) stop it in its tracks because s/he won't want it reaching the Chief Superintendent.

So it will be handled locally - a euphemism for not handled at all, or brushed under the carpet. This lends itself to unhealthy disrespect for supervisory ranks.

This leads to situations where problems are brushed under the carpet at every level within the organisation. Sergeants who can't handle discipline breaches won't pass them upwards; likewise for Inspectors and Superintendents. 'Yes people' are promoted leaving the whole strength simmering at rank and file level. Interview Boards sit but the reality is if candidates are disliked by their Superintendents and Chiefs they will be marked down and passed over.

I heard a story recently where a high ranking member of the force visited a rural Garda station. The Garda on station orderly duty upon seeing the officer enter the public office jumped out of her chair, went to the officer, threw her arms around her kissing and hugging her. That kind of familiarity between the ranks should be discouraged because lends itself, not only to indiscipline, but also to perceptions of cronyism.

The whole promotion selection process badly needs overhaul - the personal dislikes of one person should not be sufficient to scupper another member's chances of promotion.

TV sets in Garda Stations are a disaster. These are usually hidden in presses under counters in the public offices or in recreation rooms off public offices.

All kinds of programmes from sports to films distract not only the Station orderly from his/her duties but mobile patrols, public order patrols, and beat personnel. Gardai don't live in stations any longer and TV sets, pool tables etc should be banned from the buildings. They lend themselves to personnel disgruntled at being disturbed becoming impatient and even rude to callers to the desk.

You cannot run an organisation without discipline and clear lines need to be drawn to ensure that it cannot be (deliberately or otherwise) confused with bullying.

Justice Reform Unit,
Department of Justice and Equality,
51 St. Stephen's Green,
Dublin 2.

Dear Minister,

I welcome the opportunity to make submissions with regard to the establishment of a Policing Authority. I would be grateful if you could consider my view as detailed below.

Functions & Responsibilities

To conduct a full review of the Garda Síochána with a view to implementing the following changes.

- Reduce the amount of Inspectors, Superintendents, Chief Superintendents & Assistant Commissioners, there are too many Senior Officers and middle management as it is and some of the functions of management will be taken away by this authority.
- Remove Human Resource Management from An Garda Síochána with a view to the policing authority along with HR Civilians taking charge of appointments, promotions and transfers. Likewise promotion to Superintendent and above should be taken over by the body. As things stand all appointments, promotions and transfers in the Gardai is down to how well connected the member is. Gardai are trained from a young age to police the streets and are not capable of the HR management of 13,000 people.
- From a HR and policing point of view the Garda Commissioner should be directed that all Gardai working in plain clothes but not appointed as Detective, JLO or other appointed position should be redeployed to Uniform duties on the front line where they are most needed as a resource.

- Act as an intermediate body between gsoc and Gardai. All complaints of a potential criminal nature should be referred to gsoc and all other complaints particularly internal affairs should be dealt with by the authority.
- Act as the confidential recipient for whistle blowers.
- Provide a system of receiving confidential complaints/grievances from Gardai of all ranks.
- Deal with internal allegations of bullying.
- Provide a modern version of Garda Code.
- Design a new respectable looking uniform.
- Fight for retention and in some cases re opening of Rural Garda Stations.

Apointment and Membership

- No serving or former members of An Garda Siochana should be appointed.
- Officials from the Departments of Justice and Education should be considered.
- Senior HR Personnel from Private or Public sectors should be considered.
- No member of gsoc or inspectorate should be considered.
- Chief of staff of Defence Forces should be considered.
- Members of Judiciary; judges, former judges, solicitors or barristers should be considered but not any person practising in Criminal Law.

Relationship with Government/gsoc/inspectorate

- Regular reports to be provided to Dail and Oireachtas meetings.
- In relation to GSOC both bodies can refer cases to each other with all internal matters going to Policing Authority and all criminal matters to gsoc.
- Inspectorate should carry out extensive research into cpd, internal affairs and all areas of improving Gardai and report findings to policing authority.
- Garda Siochana, gsoc, dept of justice and inspectorate should all answer to Authority.

In addition to all of the above points I recommend that the Policing Authority identify problem stations and set about rejuvenating morale in these stations. For examples some stations, one in particular have consistently featured in the public domain for the wrong reasons such as members

appearing in court on criminal charges and receiving criminal convictions. Such stations need to be freshened up by way of new management and movement of members who wish to transfer.

Finally I live in a rural community and have noticed a strong decline in Garda presence in my locality. I hope that the Policing Authority can examine the decline in Rural Policing and address the issues concerning people in Rural Ireland.

Policing Reform Independent Authority Suggestions to Advertisement in Star Paper Titled "Government Consultation on an Independent Policing"

To Whom It May Concern,

I, _____, have seen the work of our policing force first hand. I will not go into the details as issues involving individual cases are not to be considered. This is the first flaw as it is precisely those individual cases which must be examined in order to get to the root of the laissez-faire attitude of the Gardaí which results in the unnecessary deaths of people due to their negligence or / and lack of training in the areas of mental health and the addict avoidance of our Governments to find the political will to finance and educate our police in order to avoid tragic deaths. The whole method of seeing and understanding why crime exists in the first place is well scripted by both sociologists and criminologists. The health system is buckling under the barrage of people who are in need of help in order to adequately transpire from adolescence to being a healthy adult capable of existing in an open minded society rather than being criminalised and labelled for life. The prison industry in warehousing people to be locked up for seventeen hours a day are creating a criminal university where people are forced to play a negative ego game in a society of the fallout of the Celtic tiger and are caught in a dysfunction akin to a bipolar tryptich with the Gardaí on the interface of this shadow narcissism. In this fallout of the good and evil created by the split psyche of the narcissistic tree of Good and Evil, we must first learn to be gentle in our growing collective rainbow culture. Growing pains of a young European nation who lock up more of our unwanted children as adult children or Brat child gangsters. We are ultimately capable of resolving this and healing the deep psychic wounds of oppression and be careful that we do not become the oppressors of our own errant people who risk the thin line of crime shadows and their legal alter egos.

Finally, we must train specialist Gardaí in psychology to a level of discernment to intervene in domestic situations, especially when they are asked to use their legal right to incarcerate in a mental facility when they become a danger to themselves or others. When the Gardaí do not have these skills of discernment and timely intervention, people die due to their inability to get help from the agencies of the State which are provided at inadequate levels. We must have hope that we can generate the intelligence and will to help our lost and disempowered people. Alcohol and drugs are here to stay and we must remember that this State empowered unmarried mothers to birth fatherless sons who, in their inability to bond in the vital father / son relationship fall foul of law and addiction. We must rear our own self-created demons and begin to understand the growing pains of a yet young State.

So, to finish, I suggest more of a Garda liaison with rehabilitative services and the political will to create centres to help rather than criminalise our mentally unwell as the dark shadow of a cruel system. There must be humanistic services provided to help the social welfare ghettos that our previous Governments have created and now neglect. It is not houses we need, my God, we as a nation have the creative wealth of a splendid Celtic past, we must grow an honest and transparent national soul and love the state of our human condition. There is hope and love now we must let

charity and forgiveness become a cornerstone in our new alive, fun society, who can handle the sections of recreation drug use and misuse as their misfortune if they can find no spiritual path in our new secular society. We were not called the island of saints and scholars for nothing and we must have compassion for our Gardaí who most of the time do a wonderful job of not interfering in the free creativity of its citizens.

Oh, come away o human child
To the waters and the wild,
Least we forget who we are.

W.B. Yeats

Yours sincerely

Looking forward to your reply before you spend millions on agencies that create further disharmony, we as a people in dialogue can fix our own problems.

Mise le meas

Submission on the Concept of a Garda Authority

Professor Dermot P.J. Walsh MRIA

Introduction

Policing is a unique and vital public service that is not suited to the normal constraints and requirements of political governance. Its pivotal role in the judicial law enforcement process, coupled with the immense powers of each police officer over the life, liberty, property and privacy of every individual, are such that it cannot safely be left to the direct control of central government. Exposing the police to the conventional processes and procedures of central government invites the risk of political interference in decision-making in the criminal process. Equally it facilitates the deployment of the full force of police power and resources by powerful political and economic interests against those individuals and minorities they perceive as a threat. On the other hand, insulating the police against the scrutiny of the democratically elected government runs the risk of fuelling a police state in which the police are free to use their immense powers and resources to pursue their own political and sectional agendas. This provides the opportunity for even more sinister and secretive forces to use the police as a tool to further their own interests at the expense of society as a whole.

There is no perfect, or even ideal, solution to these tensions in police governance. The aim must be to strike a practical and principled compromise in which the police can deliver their vital public service functions in an environment where they are protected against being used as a tool of powerful elites, while remaining effectively accountable to all of the publics they serve. In many democracies based on the rule of law, this practical and principled compromise has entailed the sharing of police governance among several bodies, two of which are the police and central government. The others (or other, depending on jurisdiction) are: a police authority, the central prosecutor, local authorities etc.

In my view, Ireland is probably best suited to a tri-partite arrangement in which the third body is a Police Authority which sits above the police and parallel to central government. In this arrangement, I envisage the Police Authority playing the instrumental role in protecting the police against sectional political direction, while at the same time ensuring that the police are transparently accountable to the public for the quality of service they deliver. In effect, it will subsume most of the policing functions currently vested in central government generally, and the Minister for Justice in particular. It will also have further powers and functions: it must establish and maintain a professional, human rights compliant, transparent, efficient, effective and accountable police service; it must oversee compliance with best international practice in the standards of recruitment, education and training, appointments, promotion and accountability; it must provide human rights compliant equipment and exercise close scrutiny over the use of weapons; it must closely supervise the exercise of police powers and the quality of police performance; and it must give advice,

leadership and direction to the police on operational policies, priorities, strategies and practices. The capacity of the Police Authority to deliver on these matters will depend very heavily on it being established with the necessary independence, powers and personnel to take a robust, hands-on approach to the discharge of its role. I have outlined below what I consider to be essential in this context. If I had to emphasise one concept that should inform these components and the contribution of a Police Authority as a whole it would be transparency. A Police Authority must deliver maximum transparency in policing otherwise it is not worth the effort.

Before outlining the essential components, it must be acknowledged that the current Garda State security role is problematic. In my view the Garda should be a purely civil police service, and this State security function should be transferred to another body (the status, remit, composition, accountability etc of which is another day's work). The proposals outlined below are framed on the basis that the State security role will be transferred from the Garda. Even if it is not so transferred, the essence of my recommendations remains the same. However, I do accept that the retention of a Garda State security function will entail some limitation on the powers and functions of the Authority (and a correlative increase in the Minister's input) in situations where State security issues are in play.

Overall objectives

- To ensure the delivery of an efficient, effective, human rights compliant, ethical and transparent police service;
- to render the Garda accountable for their policies, practices, strategies and performance;
- to act as a buffer against direct political involvement in policing policies, practices, strategies, operations and performance
- to render the Garda responsive to community needs and circumstances and human rights principles

Powers and functions

- Appointment of all officers of Commissioner rank by open competition, after consultation with the Minister for Justice (ultimate decision to be that of the Authority).
 - This shall extend to the power of removal for just cause and subject to compliance with fair procedures
 - The power of appointment and removal over all other members should vest in the Commissioner, subject to standards and procedures set and overseen by the Authority
- To discharge the regulatory functions with respect to the Garda that are currently vested in the Minister – including: recruitment, appointments, education and training, pay, pensions, conditions of service, discipline, complaints, ethics, promotion, uniform etc.
 - In addition to regulations on education and training, it is vital that the Authority should exercise close direction and oversight over the structure, contents, standards and delivery of education and training for both recruits and professional development

- To provide and maintain buildings and equipment in consultation with the Commissioner
 - This must include control over the type and range of vehicles, weapons, surveillance devices, IT technologies etc to be available for use by gardai
- To determine Garda estimates and budget in consultation with the Minister
- To determine annual and strategic Garda plans in consultation with the Commissioner
- To approve (at least annually and as the need arises) Garda policies, priorities and strategies in consultation with the Commissioner
 - This must include operational policies
 - Day to day operational decisions, and the management of an individual law enforcement etc operation, must remain the preserve of the Commissioner; but she will be accountable to the Authority for decisions made, and for performance and outcomes with respect to them
- To require a report from the Commissioner at any time on any matter concerning the Garda, the policing of the State or EU/international police cooperation. This is a critical power as it will play a vital role not just in delivering accountability, but also in replacing the current role of the Minister for Justice as a conduit for information on the Garda and policing via Dail questions.
 - This must include reports on individual operations that have given rise to concern among the public or a section of the public
 - Restrictions (eg. to protect the integrity of an ongoing critical investigation, etc) to be strictly limited and defined
- To require annual reports from the Commissioner on the discharge of Garda functions, Garda performance, the management of the Garda organisation, the policing of the State and cross-border police cooperation in Ireland, the EU and internationally
 - This must include the power to call for general reports for time to time as the need arises
- To require periodic information on crime and the exercise of Garda powers. Again, this will be a vitally important power to replace the current role of the Minister for Justice in acting as a conduit for such information via the Dail question. It must ensure the provision of extensive and detailed information on crime and the exercise of Garda powers – areas that are grossly undeveloped in terms of data coverage and transparency in this country. The material must be published regularly by the Authority
 - It is vital that this power extends to the exercise of Garda powers from stop, through arrest, detention, entry, search, surveillance etc. It is essential in any democracy based on the rule of law that this data should be publicly available alongside published information on Garda policies on the exercise of these powers.
 - The publication of crime data (currently published through the CSO) needs to be radically revamped to make it much more comprehensive, detailed and meaningful. It needs to range from data on crime reported/unreported and detected right to final disposal in the courts, including detailed data on steps in the criminal process en route, all broken down on the basis of age, gender, location etc

- To keep under review trends in complaints against the Garda and how they are resolved (see below under relationship with GSOC)
 - The Authority should pay particular attention to underlying trends and issues that are giving rise to public concern or which may reveal weaknesses in Garda policies, practices, priorities, strategies, management etc. with a view to exploring the need for remedial action and taking such action where necessary
- To establish an independent inquiry into any aspect of policing or the Garda which is giving rise to public concern.
 - The Authority shall appoint a suitably qualified independent chairperson who shall have the power to summon witnesses and to compel the production of documents, subject to limited and strictly defined exceptions
 - Witnesses shall be generally obliged to answer questions on oath and must submit documents
 - The sittings shall be in public or private as determined by the chairperson
 - The inquiry shall report to the Authority which shall normally publish the report
- To hold monthly meetings with the Commissioner etc to discuss matters concerning the Garda and policing from an accountability perspective. The Commissioner and her colleagues will be expected to respond to questions and matters raised both orally and, where requested, through the provision of documentation. Restrictions (eg. need to protect ongoing criminal investigations, legal privilege etc) should be strictly limited and defined. The Authority will be expected to convey their concerns (and satisfaction) over Garda policies, practices, performance etc. The Authority will also be expected to respond to Garda concerns over Authority decisions and performance on matters within its remit (budget, appointments, policies, standards, training and education etc)
- To hold quarterly meetings of the type outlined in the immediately preceding bullet which are open to the public. These quarterly meetings should be held at different locations around the country from time to time.
- To hold an annual public meeting (attended by the Authority members and the Commissioner etc) to listen to and to respond to issues raised concerning the Garda, policing and its own performance as an Authority.

Composition

- Composition is absolutely vital to the success of the Police Authority. It must have some link to democratically elected representatives, without being a reflection of the Dail. It must have a broad degree of representativeness without being too large or elected. It must have academic (policing/criminal justice) and regulatory expertise on it without being a body of academic and/or administrative experts. Most critical of all is the calibre of members appointed to it. They must be able, willing and committed to contribute their own brand of knowledge and experience to the common enterprise of a professional, human rights compliant, transparent, efficient, effective and accountable police service. I would suggest that it should be broadly representative of a range of interest groups and experts: eg - one member from each of the main

political parties (including Sinn Féin) and independents; one from each of a range of interest groups such as employers/business, workers/unemployed, farmers, voluntary sector, youth, elderly, immigrants/ethnic minorities, religious, social workers, medical profession, lawyers and academia. The appointees should reflect gender balance.

- The choice of chairperson is critical. It needs to be someone who can combine expertise in policy/public sector management with a strong reputation for independence, vision and balance. It needs to be a leader who can bring disparate factions/interests together in a common goal; someone who can articulate vision and communicate effectively with disparate political, socio-economic and vested interest groups. A public profile would be helpful but not essential. Expertise in policing/criminal justice would be helpful but not essential.
- The chairperson should be a salaried full-time appointment. Members should be salaried part-time appointments.

Appointment

- Members should be appointed by the Oireachtas following a public invitation of expressions of interest. The process to be handled by an appropriate Oireachtas Committee (preferably not Justice). The term of appointment should be four years renewable once on a staggered basis (i.e. first half of the appointees should be for two years in the initial round of appointments). A member can be removed by a majority vote in each House of the Oireachtas, but only for gross misconduct.

Status and structure

- The Authority should be established as a single body with legal personality just like the Policing Board in NI. It should be statutorily independent in the discharge of its functions – comparable to the Irish Human Rights Commission.
- It should have the power to establish sub-committees and delegate specified functions to sub-committees

Relationship with Ombudsman Commission

- As noted above, the Authority should keep under review trends in complaints against the Garda and how they are resolved. To this end they should receive regular reports from the GSOC on complaints (broken down into relevant categories), how those complaints are dealt with and outcomes. The Authority should meet regularly with GSOC to keep itself informed on trends in the incidence and contents of complaints and in their investigation and disposal. A primary purpose of these reports and meetings will be to identify (in conjunction with GSOC) factors that are generating complaints and/or impeding their efficient, satisfactory and fair disposal, and to take necessary measures (within its competence) to address them (eg. a change in some aspect of Garda policy or practice, a change in some aspect of Garda education and training etc). Where the need for remedial action beyond the competence

of the Authority is identified, it will have a duty to bring the matter to the attention of the competent body with appropriate recommendations for action.

- There is a broader issue of whether the Minister's current powers and functions with respect to GSOC should vest in the Authority. As a general principle, the Minister's powers and functions should transfer, but there may be a separate need to reconsider the appropriateness of some of those powers/functions

Relationship with Inspectorate

- The Authority must have the power to request the Garda Inspectorate to conduct an inquiry into any aspect of the efficiency and/or effectiveness of the Garda and its performance. The Inspectorate should be obliged to comply with such a request in the absence of reasonable grounds to decline. The Inspectorate's report consequent on such an inquiry should be submitted to the Authority and should normally be published.
 - The Authority should meet regularly with the Inspectorate to keep itself informed on the progress, contents and results of Inspectorate inquiries (not just those requested by the Authority)
 - The Minister's current powers and functions with respect to the Inspectorate should vest in the Authority

Relationship with Local Joint Policing Committees

- The Police Authority should maintain a dialogue with the local Committees, inviting and considering their view on local policing issues.
 - The Authority should subsume the powers and functions of the Minister with respect to the local Committees
 - The Authority should host an annual meeting with the local committees to discuss issues of common interest and how they might be addressed

Accountability of the Police Authority

- The Authority should submit an annual report to the Oireachtas on the state of the Garda and the policing of the State. This report must also address its own performance in the exercise of its powers and discharge of its functions.
 - The annual report should be debated in the Dail and in the Seanad
 - The Authority chairperson etc should appear before the Joint Committee on Justice etc every year to be questioned on the report and related matters. This is without prejudice to an appearance before any other committee, such as PAC.

The Broader Context

I would like to take this opportunity to make a separate, albeit related, point. The problems currently associated with policing in this country cannot be addressed

satisfactorily by ad hoc, piecemeal measures such as the establishment of a Police Authority, tinkering with the complaints procedure, a succession of judicial inquiries etc. What is needed is a comprehensive, considered, evidence-based and forward-looking inquiry into all aspects of policing in this country, ranging from what the public (and sections of the public) need and want from policing, through police powers and procedures to all aspects of police structure, organisation, methods governance and accountability. The object must be to define a vision for Irish policing for the next fifty years, and to identify the joined up reforms that will be necessary to deliver on that vision; all bench-marked against international best practice relevant to a common law democracy based on the rule of law situated firmly within the EU and in an increasingly diverse and globalised society.

The Patten Commission on the reform of policing in Northern Ireland provides a useful blueprint. The inquiry should be carried out by a Commission of experts embracing: senior police officers from other jurisdictions with a reputation for vision and commitment to community based policing; academics in policing/criminal justice; representatives from the legal, medical and social work professions; and representatives from the business and economically and socially deprived communities. The Commission should commission independent research on relevant subjects, conduct hearings in all parts of the community (eg. in community centres in social housing areas), conduct focus group meetings across a wide range of expert and non-expert groups; and examine policing in other comparable jurisdictions abroad. Its object should be to produce a report setting out a reasoned road map for comprehensive police reform, written and presented in an accessible style for the average layperson. The task for government should be to debate that road map thoroughly in the Oireachtas and to implement it in its entirety subject only to reasoned changes to reflect the Oireachtas debate.

The choice of chairperson of the Commission will be vital. I would suggest Maurice Hayes or Maurice Manning.

I am happy to clarify and build on any aspect of this orally or in writing.

Professor Dermot P.J. Walsh MRJA

Justice Reform Unit
Dept of Justice & Equality
51 St. Stephen's Green
Dublin 2

27th May, 2014

Dear Sirs,
Re: Independent Policing Authority

I should like to make the following submissions:

- The Authority should be set up a.s.a.p.
- The Authority should have the overall control of the Garda Siochana
- No member of the Auth. should be a serving or recently serving member of the Garda Siochana [This includes the new Commissioner when elected].
- “Chair” and clear independence of same, is paramount. Whilst there are many worthwhile civil servants [especially retired], in view of the Guerin Report, such an appointment would be a huge mistake and would lead to public distrust *ab initio*.
- Whilst most worthwhile people have political affiliations of some sort, the “Chair” should not be someone with party connections.
- As far as possible, the same restrictions should apply to other Auth. members.
- The Government should appoint the Auth. in the first instance but it then should answer to the Oireachtais, giving a report twice a year – more if required by either the Oireachtais, or the Auth.
- Following the Guerin Report, nobody from the Dept. of Justice & Equality should be a member of the Auth.
- The Minister of Justice and Eq. should not be a member of the Auth.
- Neither the said Minister, the Dept. of J & E nor the Garda Commissioner should have any form of veto on the role/activities of the Auth. [the Legislation unfortunately gave a right of veto to the Banks in relation to the insolvency arrangements – hence the ongoing mess. Let us not repeat that mistake].
- The role and powers of the GSOC should be strengthened, widened and reasonably transparent, so that public confidence can reside in it.
- It should not use current members of the Garda to investigate themselves.
- The culture of loyalty as opposed to justice and truth as referred to in the Smithwick Report must be tackled as a priority by the Auth. [very difficult].

Submission on Independent Police Authority

Functions and responsibilities of a Policing Authority

The function of the Policing Authority should be to oversee the workings of the Police force both at local and national level. They must ensure the needs and requirements of the community are served. Policing Authority boards should exist at both at national and local level. The local/regional Policing Authority should be responsible for policing in its area. If you reduce problems at local level, then you automatically reduce the problems at national level. For this to work Police (An Garda Síochána) must be divided into regional forces. This will best serve the community and reduce the level of incompetence and corruption.

It should be the responsibility of the Policing Authority to monitor the actions and behaviour of the Police. They should be in regular contact with the police at local level. The police in turn should report and consult with the Policing Authority on an ongoing bases. The Policing Authority should be responsible for promotions within the police.

Appointment and membership of the Authority

Political appointments should be outlawed.

The Policing Authority should be made up of regional authorities. The national authority should be made up with a member of each of the regional authorities. The regional authority should be made up of a group of seven to nine persons. Positions on the regional authority should be offered to groups within the community, for instance, if a group is given authority to appoint one of their members. Then it is the choice of that group whom their member shall be. The term of service on a Policing Authority should be three years. No member can serve longer than two terms, at which time they must step down and would not be eligible for re-election for a further three years. The authority would elect their own officers. The chairperson position would rotate yearly. The financing of the authority would be done by the group that has the privilege of appointing a member. For instance, if the Farmers organisation had a member on the regional authority it is up to the farmers to take care of their own member. This would apply to all groups. Other groups whom could be considered to appoint a member could be: - The legal profession, Farmers, Chamber of Commerce, Transport & Motoring groups, Charity organisations, Neighbourhood Watch, Vintners including Restaurant and night Club establishments.

Relationship with the Government and the Oireachtas

Relationship between the Government and the Policing Authority should be through the Minister responsible for the reverent police force. If and when the Minister is unavailable contact should be direct with the Taoiseach. Contact should not be controlled by the civil servants.

Any short comings by the police should be reported to the national Policing Authority, if a matter is grave enough the local Policing Authority should go straight to the Minister. They should also work close with the Garda Síochána Ombudsman Commission.

Implications for the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate.

The Garda Síochána Ombudsman Commission (GSOC) should have powers similar to their counterparts in Northern Ireland. They should have the power to bring cases before the Courts without consulting with senior Police members or civil servants.

The Garda Síochána Inspectorate should be disbanded.

Notes

Forming a Policing Authority in itself will not be enough to sort the problems of An Garda Síochána, to achieve this objective you must first identify their problems.

An Garda Síochána are crumbling, yet, they have not been attacked by any outside force such as, terrorism, gangland attack, negative media campaign, political interference or protests from the taxpaying public. They are crumbling under the weight of their own corruption. Their problems have to be fixed from within and time is running out. There are still good people within the force and they are the ones that is keeping the organisation going.

There are five main problems with An Garda Síochána, they are badly trained, badly managed, badly deployed, overall attitude and the method of communication between the Garda and the Department of Justice is seriously compromised.

Training

This is where most of them get off on the wrong foot. Young people enter the full of enthusiasm. However, the training personal sometimes leave a lot to be desired. There have been rumours over the years of Garda members that misbehaved within the force where sent to Templemore as a punishment and these are some of the personal involved in training. There are no rumours circulating that any Garda member was such a good Garda that they were sent to become instructors. The training of young police personal is something that will have to be overhauled. The introduction of outside expertise in the training program will have to be seriously considered.

Management

The selection process for promotion within An Garda Síochána is not in keeping with best practice in selecting managers. Middle or senior management are not selected on merit, it depends who you are and whom you know. The Policing Authority should also be involved with the promotion and appointment of senior Gardaí.

Deployment

Police should be based in the area they know best. If you were to travel to any other place in Europe or the USA and stop and speak to a policeman you will find he is from the area he services. The same should apply here.

Attitude

An Garda Síochána are too secretive, they fail to give accountability, nobody is responsible for anything, their image is all important regardless of the consequence. Their attitude at the barracks counter leaves a lot to be desired. Just imagine, take any town in Ireland and go to the local Hotel and take the staff from behind reception and place them behind the counter in the Garda station. Now take the Gardaí from the Garda station and place them in the reception of the Hotel. The popularity and efficiency of the Gardaí would rise and the local Hotel would end up with little or no guests.

Garda and the Department of Justice

This is the area where most of the problems occur. Originally the DOJ were to monitor the Gardaí and keep them in line and oversee their performance. The DOJ were the only body that the Gardaí had to answer too. Over the years their situations changed. It transpired that the Gardaí end up in the position of dominance. This change took place over the past twenty years. When civil servants are moved within the DOJ there is no training or standard to be achieved before they take up their new positions. This created a situation whereby the civil servants were in a vulnerable position and open to manipulation. Had the civil servants been stronger and better trained, then Donegal may never have happened. Today you will find DOJ civil servants will turn automatically to the An Garda Síochána for direction in their work because they have known no other way. This has to change.

Conclusion

There are many more examples of wrong doing and inefficiency I can tell you about and there are many other suggestions I can make, but I do not know how serious you are about change. If you wish to speak to me I will make myself available. As a Farmer and a Businessman I have been dealing with the Gardaí over fifty years and I first called to the DOJ in the late seventies and dealing with you ever since. You are welcome to the benefit of my experience if you want it.

Justice Reform Unit,
Department of Justice and Equality,
51 St. Stephens Green,
Dublin 2.

CONSULTATION -
PROPOSAL TO ESTABLISH AN INDEPENDENT POLICING AUTHORITY.

When An Garda Síochána was established in 1922 it adopted the Royal Irish Constabulary (R.I.C.) model of policing both operationally and administratively. The Department of Justice took over the oversight role and political responsibility which had previously rested with the Chief Secretary in Dublin Castle and the Government in London.

While this model of policing worked successfully in the early decades of the State the dynamics of policing and society have changed fundamentally in the intervening years. A new model is required for the 21st century and we feel the Government decision to establish an Independent Policing Authority and the appointment of the Commissioner by open competition is a step in the right direction. We believe it will enhance the delivery of a 21st century policing service to the public and it will also restore confidence in An Garda Síochána and the morale of its membership.

During the last 10 years of recruitment (2000 – 2009) over two thirds of entrants had a third level qualification. There have been significant advances in training and development at point of entry and ongoing personal development at all levels. An Garda Síochána have a well educated workforce with great potential. Yet the organization has failed to capitalise on this valuable resource.

Significant problems also exist in the organisation at management level and particularly at senior management level. Many of the failures have arisen in part because of the value system / culture of the organisation. This value system manifests itself both overtly and

covertly. Crucially the subliminal message will supercede the official resulting in a particular policy or initiative not getting traction on the ground thus fading.

Internally there has been a long-term concern regarding the political influences exerted on the Garda organisation. Of late this perception and concern has increased and is now also an external stakeholder concern. Specifically there is a concern over the political influences in the areas of promotion, recruitment, transfers and allocations. There is also a concern about the general political influence on how the organisation does its business.

This politicisation is perceived to take two forms; a direct external influence by politicians and internally by senior Garda Officers. A key result of this is the internal belief that loyalty is valued and favoured over ability. Morale is thus negatively affected. Highly qualified personnel are either passed over or are not presenting for promotion or lateral movement. Both influences are detrimental to the effective and efficient operation of the Garda Síochána.

In order to succeed the proposed Authority must be, and be seen to be independent of all inappropriate influences. Through robust oversight, the new Authority must ensure that such politicisation which existed in the past has no place in An Garda Síochána in the future. All appointments must be made on merit following open and transparent competitions. The new Authority must be a buffer between An Garda Síochána and the Government of the day.

Another contributory factor is that historically careerwise most of the senior management team progressed through the Detective Branch or Administrative positions in Garda Headquarters. This despite the fact that approximately 80% of the service is employed in uniform operational policing. Detective work tends to be rated more highly and the same value is not placed on other competencies, which are required to manage and lead a large evolving organisation like An Garda Síochána. Crime fighters are lauded internally and in the media. While this is understandable given the valuable work that they do and the risks they take, it is critical that the organisation is aware that this is happening so that others do not feel that their work is less valuable. The undervaluing of the operational uniform Garda has to be reversed if reform is to succeed.

It goes without saying that crime prevention and detection is the core business of the organisation. However a quality policing service cannot be delivered in the absence of good governance and if it is not led and managed ethically and in accordance with best practice. It is imperative Human Resource management is advanced in line with best international practice in order to support operational policing. An Garda Síochána have fallen behind most Government Departments / agencies in this area. New innovations in the private sector must also be considered and where suitable adopted. It will be seen in the section 'Function and Responsibilities' that many of the issues are HR related. We see this as one of the areas critical to the reform of An Garda Síochána, the improvement of morale internally and the promotion of public confidence.

Initially following the enactment of the Garda Síochána Act, 2005, there was significant development and review of policies. However there has been little progress in recent years. Reviews of Policy and Procedures on Harassment, Sexual Harassment & Bullying and the Employee Assistance Service, both of which were commenced five years ago have not yet been finalised. The resource of the Garda Reserve has not been properly utilised due to the failure to roll out the new powers agreed following a review, finalised three years ago. Limited progress has been made on delivering a performance management system. The Professional Standards Unit which was established following the Morris Tribunal has yet to reach its potential in ensuring that good governance prevails. The recommendations of the Patton Commission on Policing insofar as they relate to An Garda Síochána must be proactively addressed. Lateral entry has not happened; only one secondment of a year's duration to the P.S.N.I. has taken place while exchanges have been reduced to a trickle.

If the organisation is to realise its full potential, it must focus on governance, manage the critical issues for success in a modern organisation and allow for regeneration.

In conclusion the role of the Authority must be to ensure the attainment of the Mission of An Garda Síochána in accordance with the Legal, Ethical, Financial and Political parameters of the State.

FUNCTIONS AND RESPONSIBILITIES

The Authority will have responsibility for circa 13,000 full time Garda members, 1,400 Garda Reserves and approximately 2,500 civilian staff. In particular we believe the Authority must have responsibility for:-

1. Oversight of the strategic objectives and governance of An Garda Síochána.
2. The development of a three (3) to five (5) year organisational strategy in conjunction with the Garda Commissioner.
3. The development of an annual Policing Plan and the establishment of key policing targets in consultation with the Garda Commissioner
4. Monitor Police performance against the Annual Plan and 3/5 year strategy.
5. The publishing of an Annual Report on Police Performance.
6. Holding to account the Commissioner on the operation and management of the Service.
7. Require the Commissioner to report on issues of National importance and also any matter critical to the good governance of An Garda Síochána.
8. Report to the Oireachtas including presenting an Annual Report on Policing.
9. The establishment and allocation of budgets.
10. The payment of salaries and other financial payments.
11. Oversight of the provision of all infrastructure to support the delivery of a policing service, e.g. I.T., Telecommunications, Transport, etc.
12. Following consultation with all stakeholders approve the opening or closing of Stations.
13. Appointment (and dismiss if necessary) through open competition of the Garda Commissioner, Deputy Commissioner, Assistant Commissioners and all comparable civilian positions in conjunction with T.L.A.C.
14. Oversight of all promotion competitions from Sergeant to Chief Superintendent inclusive, with the competitions being administered by the Public Appointments Service. The role of the Promotion Advisory Council as established under the Garda Síochána (Promotion) Regulations 2006 being subsumed by the new Authority.

15. The approval of promotions of Superintendent rank and above.
16. Oversight of the discipline of Assistant Commissions, Deputy Commissioners, Commissioner and comparable civilian posts.
17. Oversight of the reform and regeneration of the Human Resources Department in conjunction with the appointment of a civilian Executive Director of Human Resources (Advertised May 2014).
18. Oversight of recruitment of Garda trainees and civilian personnel together with regular review of entry criteria and selection methods.
19. Oversight of all training with particular emphasis on training at point of entry.
20. Oversight of the delivery of a training program on the principles of Human Rights, diversity and culture change.
21. Oversight of the development and delivery of a robust Performance Appraisal system linked to the promotion process and lateral movement.
22. Oversight of the development and delivery of a Tenure Policy to obviate the possibility of staff remaining extensively long periods in specialist areas.
23. Oversight of a review of abstraction including sickness absence and the predominant causes of long-term absences.
24. Review the Garda rank structure together with the operational structure.
25. Liaise with the Garda Staff Associations on the development and implementation of Industrial Relations policies.
26. Carry out research on optimum Garda numbers and deployment together with similar research in respect of each of the promoted posts.
27. The holding of a biennial convention on Policing (similar to the Convention on the review of the Constitution).
28. Liaise with the Garda Síochána Ombudsman Commission.
29. Require the Garda Síochána Ombudsman Commission (GSOC) to provide quarterly reports on complaints received and outcomes.

APPOINTMENT AND MEMBERSHIP.

The ordinary members of the Authority should be selected from as wide a spectrum of society as possible and must include representatives of community groups, voluntary organisations, business, trade unions, legal profession and experts in policing. They must also have the expertise to set policy priorities and audit the management of resources, delivery of service including community engagement, human rights and diversity. The Chairperson to be appointed by the Government and must be an eminent person of high standing.

RELATIONS WITH GOVERNMENT AND THE OIREACHTAS.

The Authority should continue to report to the Minister for Justice and Equality who will report to the Government and the Oireachtas. It will also report to the Oireachtas Committee on Justice and other Oireachtas Committees as requested. They must also lay an Annual Report before both houses of the Oireachtas.

IMPLICATIONS FOR GARDA SÍOCHÁNA OMBUDSMAN COMMISSION AND GARDA INSPECTORATE

The functions of the Garda Síochána Ombudsman Commission (GSOC) should remain as enacted under the Garda Síochána Act, 2005, subject to the outcome of the current review. They will continue to report to the Minister for Justice and Equality.

Under the new dispensation it is suggested that in order to achieve maximum value from the work of the Inspectorate and a streamlined administration they should report directly to the Authority. The powers that are currently vested in the Minister for Justice and Equality under the Garda Síochána Act, 2005, to order an enquiry to be conducted by the Inspectorate in the public interest or to examine or enquire on matters which contribute to the Efficiency and Effectiveness of An Garda Síochána in fulfilling its mission should in the interest of depoliticisation be transferred to the new Authority. Also arising from their oversight and governance role, we believe the Authority will be best placed to order such an enquiry. The Chief Inspector or a representative should be a member of the new Authority.

Government Consultation on Justice Reform - Proposal to establish an Independent Policing Authority

Submission of Dr Vicky Conway (BCL, LLM, MSc), Senior Lecturer in Law, University of Kent, Author of *The Blue Wall of Silence: The Morris Tribunal and Police Accountability in the Republic of Ireland* (2010) and *Policing Twentieth Century Ireland* (2013).

"We are at a defining moment in the history of the policing service, a moment at which the principles of accountability, transparency and professionalism must be at the core of a strong, confident and connected policing service and at which such principles must be seen to be at the core of everything we do in order that we are trusted and valued by the public we serve." Acting Commissioner O'Sullivan, Joint Committee on Justice, Defence and Equality, 29 May 2014

Any effort to establish "an independent Policing Authority, which is appropriate to Ireland's needs and which will maintain appropriate democratic accountability to the Oireachtas" needs to be embedded in an understanding of the weaknesses in policing structures in Ireland, both internal and external to the organisation. If we do not engage in such an assessment then any mechanism created cannot be expected to solve any problems, as it is not created with those in mind. The role which such a body can play in remedying those weaknesses must then be accurately gauged, based on existing evidence and research which can aid such decisions.

In this submission I will argue that to achieve an understanding of the weaknesses a Patten style commission should be undertaken. Only then can a full sense of the issues be accumulated. Without it we are simply reacting to individual incidents and as we have seen from the Morris Tribunal, for instance, we cannot then fully address the problems.

If government is not inclined to proceed with such a Commission it is essential that existing evidence and research both from Ireland and abroad is considered in detail. What my research has led me to conclude is that there are three core aspects of Irish policing which need to be addressed:

1. Governance
2. Accountability
3. Police Culture

An independent Policing Authority, in line with the recommendations I will make below, can directly contribute to 1 and 2 and can be one element in beginning reform of 3. To this end it is imperative that it is understood that events over the last number of decades have indicated serious deficiencies caused by the nature of police culture in Ireland and unless this is appreciated and addressed on an on-going basis any improvements created by a policing authority will be short-lived.

In what follows I will begin by using existing research to define what I mean by the above terms. I will then consider the known failings in regards to these in Ireland. Next I will move to the specifics

of the type of policing authority I would propose in terms of function, appointment, membership, relationship to government and the Oireachtas as well as to existing bodies such as the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate (the Inspectorate). I will also suggest that the relationship to an Garda Síochána also needs adequate consideration.

Definitions

The police have exceptional and unique powers in society: powers to invade our privacy through searches, powers to deprive us of our liberty through detention, powers to demand answers to questions that no one else can and powers to achieve some of these things by force if necessary. Weber wrote that the defining feature of the police is that they have the monopoly on the legitimate use of force in society.

Not only this, but the police have discretion in how they use those powers. A garda on the street makes a decision to stop and question one individual or another, to stop one car or another, to arrest an individual or not, to use force in arresting that person or not. We can issue regulations and guidance on how those powers should be used but often those decisions are made in circumstances where the only person who sees what decision is made is the member of the public affected by it. In some respects this is desirable: we would not want a society where police apply the law strictly in every circumstance, but this inherent discretion means that accountability is also necessary. Members of the police, politicians and the public generally need to accept that accountability is not a negative feature but is part of and parcel of ensuring that we have a police service that does its job well and which the public can trust.

It is imperative in these discussions to distinguish between governance and accountability of the police. Walsh and Conway have written that governance

“can be defined broadly as encompassing the procedures and methods aimed at ensuring the efficient discharge of the policing function... includes key management issues such as: policy formation & implementation; the determination of priorities & strategies; deployment choices; the allocation of resources; the maintenance of standards; & internal discipline... associated with the promotion of values such as transparency, responsiveness & the maintenance of professional, ethical & human rights standards in policing... the instruments and processes of governance can be used to deploy the police as a tool of repression, and ultimately as the facilitator of a police state.”

Accountability, we wrote, comprises

“all procedures and methods which can be deployed to render an individual police officer, and the police authority as whole, answerable to another person or body whether that person or body is located inside or outside the police force in question.” (Walsh & Conway, 2011)

Bowling and Foster contend that accountability:

“...involves a duty to account for actions taken, to explain them, and for the police to be cooperative with an external, independent authority and ultimately with the wider community” (2002:1015).

One might say that governance determines what the police do, when and why (a control element), while accountability responds when questions arise as to what the police, either individually or collectively, did (an explanation element). Some scholars see aspects of governance as bound up in accountability. These twin elements are represented in Chan's (1999) outline of two 'competing

meanings' of accountability when discussing the police; (i) controlling the police and (ii) demanding explanations for behaviour and actions. When discussions of accountability were most prominent in the UK, in the 1980s, commentators took extreme views on which was appropriate. Lustgarten, in his seminal work, *The Governance of Police* (1986), linked accountability directly with control. For him, it centres on how political institutions manage to govern the police and so accountability (or control) is achieved through the tripartite system, in the work of the police authorities and the Home Secretary with the Chief Constable (1986, 113). What we can take from this review of the literature is that any system put in place needs to combine but controlling and explanatory elements.¹

The Patten Commission (1999) outlined five forms which accountability should take (democratic accountability, transparency, legal accountability, financial accountability and internal accountability) which between them, it is hoped, would incorporate the twin elements of control and explanation, and deliver a robust framework of accountability.

There is one other factor to be borne in mind in any discussion such as this: police culture. In all democratic countries it is well documented that, like other occupations, police services develop occupational subcultures. Manning defines the police sub-culture as 'accepted practices, rules and principles of conduct that are situationally applied, and generalized rationales and beliefs' (1989: 360) while Chan defines it as 'a layer of informal occupational norms and values operating under the apparently rigid hierarchical structure of police organisations' (1999: 43). Reiner discusses how it applies: 'Cop culture has developed as a patterned set of understandings that help officers cope with and adjust to the pressures and tensions confronting the police' (2000: 87). Policing is a difficult job and this culture and the values and norms associated with it can help people to deal with the stress of the occupation. Reiner's work shows how certain values tend to be universal to this culture, such as machismo, conservatism, stereotyping, a sense of mission, pragmatism and racial prejudice. While the culture can help people deal with the job it has also been found to influence how police apply their discretion, use their powers, and engage with accountability mechanisms. For this reason, any effort aimed at improving democratic policing must engage with this culture and limit its negative impact.

Context

It would not be an exaggeration to state that there is something of a crisis in Irish policing at present, though it could be debated whether that crisis relates to governance, accountability or public confidence. I have written, as others have also warned, that this has been building. It is not necessary to rehash the numerous incidents which have generated concern, if not scandal but it should be stated it is likely that there are many other incidents which have not come to light. There are many dissatisfied people who have not managed to find a voice to argue their corner, people who have their own stories of police misconduct in Ireland. What we know to have happened is in no way all that has happened. Only an open, independent Commission on Policing could hope to come close to appreciating the full scale of police misconduct and thereby understand all the ills of policing in Ireland. The aftermath of the Morris Tribunal has hopefully taught us that piecemeal reform triggered by one scandal will not cure all ills.

I maintain that there are a number of legacies in Irish policing which need to be faced and welcomed into any discourse on policing: the legacy of colonialism and the legacy of the Troubles. For full

¹ There is much more that could be discussed about the powers of the police, accountability and the nature of society. How this all applies in the context of Ireland was the subject of my PhD thesis: *Breaking Down the Thick Blue Wall: A Socio-Historical Analysis of Police Accountability in the Republic of Ireland* (2008) Queen's University Belfast. I am happy to supply an electronic copy, if desired.

details of this argument I encourage reading of *Policing Twentieth Century Ireland* but I contend that both have shaped the nature of policing in Ireland in ways that we need to acknowledge if we are to move forward. Some of the consequences of these legacies are:

- A reticence to welcome a critical attitude to policing and police use of powers. Politically, in particular, there has been an attitude that it is disloyal to question the police. It should be accepted that it is disloyal to both the police and society not to question the police. As was stated by the Patten Commission: "accountability places limitations on the power of the police but it should also give that power legitimacy and ensure its effective use in the service of the community" (1.13).
- Relatedly, when problems are accepted, they are defined as the result of rotten apples. There needs to be acceptance that apples don't rot without a problem in the barrel.
- Political control of policing. The impact of this is complex, but at its most base it means that political considerations may over-ride what is best for democratic policing.
- Cultural problems with policing, most worryingly I contend, the scale of violence and use of force, abuse of interrogation problems, the position of the Special Branch, internal attitudes to accountability, and as evidence is emerging of late, racism (see Carr and Haynes, 2013).
- Difficult and dangerous working conditions for gardaí, contributing to low morale.

Governance in Irish policing is achieved through a linear mechanism: the Garda Commissioner works directly under the Minister for Justice. The Inspectorate may offer guidance but its views are not binding. Accountability is achieved in a number of ways: internal discipline, through the Dáil, through GSOC or through the courts either through the dismissal of evidence in criminal cases or through civil actions taken against the police.

In the United Kingdom a different approach is taken. The Police Act 1964 instituted the tri-partite system of governance, which in effect reflects a separation of powers approach to police governance. For each force in England and Wales a triumvirate exists between the Home Secretary, the Chief Constable and the Police and Crime Commissioner (or Police Authority until November 2012). In Northern Ireland the Policing Board sits instead of the PCC. Each of the three has certain powers and duties in respect of policing, ensuring that no one member has too much control at any one time. By no means is this a perfect system and evidence abounds of police misconduct in England and Wales in particular. What we do see however, is much less political control of policing. Further, as was stated earlier these mechanisms cannot solve all problems: accountability mechanisms and police culture also have to be addressed. As Loftus, among others, has shown, police culture remains a substantial problem in England and shortcomings of the Independent Police Complaints Commission have been well documented.

If taken as a model of good police governance, and thereby just one of three factors to be improved, this separation of powers could have many substantial benefits for Ireland. I shall now consider the specifics of how this might look.

Function:

The statement as regards the public consultation describes the proposed body as a Policing Authority. This raises ab initio the question of remit. Will such an authority cover all bodies that engage in policing functions e.g. members of the private security industry? It is submitted that for the time being the Authority should be limited in remit to the Garda Síochána, as the scale of change involved may be managed better if its remit is limited for now to the police service of the country.

The functions of the Policing Authority should relate to both governance and accountability, in effect I propose transferring much of what is currently the role of the Minister for Justice as regards policing to this body. Specifically:²

The Policing Authority should be required to:

- (a) secure the maintenance of an Garda Síochána,
- (b) secure that an Garda Síochána is efficient and effective.

These would complement the stated functions of the Inspectorate to ensure both bodies would be working towards the same goal. The Policing Authority should be required to hold the Garda Commissioner to account for the exercise of—

- (a) the functions of the Garda Commissioner,³ and
- (b) the functions of persons under the direction and control of the Commissioner.

The primary function of the Commissioner should continue to be to direct and control the force and s/he should continue to have operational independence in the performance of that function.

To achieve these functions, the Authority should set 3-5 year policing plans for the nation, taking into account any targets or priorities set by the Minister for Justice/Government of the day. In line with that long term plan, the Commissioner should then develop an annual policing plan to be approved and adopted by the Authority. It should then monitor performance of an Garda Síochána against but the long term and annual plans.

The budget allocated to the Commissioner to achieve that plan should be determined by the Authority in negotiation with the relevant government departments, and funded by government.

The Authority should have responsibility for the appointment of the Commissioner, on the approval of the Government. Serious consideration should also be given to giving the Authority the power to appoint Assistant and Deputy Commissioners. The Authority should have the power to, in the interests of the efficiency and effectiveness of the service (i.e. in line with its functions) request the Commissioner to retire. The Minister should be able to request the Authority to make this request. On this vein, the Authority should have disciplinary capacity in relation to the most senior members of the service.

One issue which will need to be separately addressed is that of national security. The two viable options here seem to be to either transfer matters relating to national security to an alternative agency (Mulqueen, 2012) or to reserve certain matters from the purview of the Authority. In the interests of democratic accountability, however, what is considered a matter of national security should be as limited as possible.

Appointment/membership

Broad, democratic membership is key to the success of an independent policing authority. As was felt by the Patten Commission a majority of elected members (i.e. TDs) will give the authority that legitimate, democratic position. An Authority of 17 or 19 members would be appropriate with 8 or 9 being TDs. The Authority will also, through its work, be supporting a large organisation, one with

² Much of this draws on the Police Reform and Social Responsibility Act 2011 of England and Wales as well as the report of the Patten Commission.

³ As outlined primarily in s.26 of the Garda Síochána Act 2005.

significant legislative and human rights obligations. To this end it should draw on expertise existing in Irish society. Thus the balance of membership should come from different walks of Irish life including, business, community, charity, NGO, academic, legal profession and so on. Appointments should be determined by the Minister for Justice and a diversity that represents the cultural mix of society should be achieved. All positions should be held for a period of 4 years and a chair should be elected by the membership of the Authority. The English approach of a directly elected Police and Crime Commissioner is not advised as this would, it is submitted, reinsert politics into the heart of police governance and accountability.

Full transparency of the Authority should be considered key with as much of its work made publicly available as possible.

Relationship to Government and the Oireachtas

Under the proposals contained herein, a triumvirate would be created between the Minister for Justice, the Police Authority and the Garda Commissioner. Each would have their individual function in respect of policing, leading to the transfer of many of the current powers of the Minister to the Authority. The relationship between the Authority and Government would then be one of collaboration, working together to achieve an efficient and effective police service.

Relationship with GSOC and the Inspectorate

In this new scenario envisaged by the creation of the Authority both GSOC and the Inspectorate would play invaluable roles. Amendments to the legislation for GSOC are necessary⁴ as are relationship between GSOC and an Garda Síochána. The Authority would not have the capacity to consider individual complaints and so some such body is essential. In addition an Inspectorate is essential for the assessment of garda practices and procedures (promotions being one that may be in need of immediate consideration). Indeed, if anything consideration should be given to the expansion of its remit in order to conduct examination and inspections of individual police stations with the aim of ensuring efficient and effective policing.

Further Points for Consideration

As Ireland is a national police force consideration should perhaps be given to some form of consultative board to exist at the divisional level which could then feed into the work of the Policing Authority. As the District Policing Partnerships in Northern Ireland these could hold monthly public meetings (Brunger, 2011) to enhance the democratic nature of police governance and accountability at the local level. This would, in my view, be in addition to the existing Joint Policing Committees.

The past decade has undoubtedly been a difficult one for the majority of members in an Garda Síochána. In the wake of the Morris Tribunal swathes of reforms were introduced and swiftly imposed on the service, in addition to the toll of the recession and its resource and financial repercussions. As can be learned from the experience of substantial reform in Northern Ireland great care needs to be taken to lead the members of the service positively through any further changes (Murphy, 2013). Those with experience in change management, particularly in police organisations should be consulted on how best this should be approached.

While it is beyond the remit of this consultation I wish to reiterate the need to consider how best to reform the culture of the members of an Garda Síochána. Research should be commissioned to fully

⁴ See further my published work on the Garda Ombudsman Commission and a forthcoming chapter in the book *Defining Events* (Manchester University Press, 2014).

understand that culture so that evidence led policies can be implemented in order to begin the difficult process of altering that culture for the better.

Conclusions

For those with the capacity to reform policing in Ireland, my primary call would be for the creation of a Patten style commission which would conduct a thorough review of policing in Ireland, listening to all those with views to express. This would help us to understand fully what works and what does not work in Irish policing.

There can be no doubt that an empowered, independent Authority has the capacity to depoliticise policing in Ireland and make a substantive contribution to the governance and accountability of policing in Ireland. A unique opportunity presents itself, where there is broad agreement on the need to reform policing. An Authority which is not given specific powers such as the setting of policing plans, the determining of budgets and the appointment of the Commissioner, could on the other hand be a retrograde step for Irish policing. In that scenario we create the semblance of independence and accountability without the reality, just as was done with the creation of GSOC in the last decade. That would be a disservice to Irish society and to the members of an Garda Síochána.

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**Response of the Irish Council for Civil Liberties
(ICCL)
to the Public Consultation
on Establishing an Independent Policing Authority**

30 May 2014

About the Irish Council for Civil Liberties (ICCL)

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976 by Mary Robinson and others, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included campaigns resulting in the establishment of the Garda Síochána Ombudsman Commission, the legalisation of the right to divorce, more effective protection of children's rights, the decriminalisation of homosexuality and introduction of enhanced equality legislation.

We believe in a society that protects and promotes human rights, justice and equality.

What we do:

- Advocate for positive changes in the area of human rights;
- Monitor Government policy and legislation to make sure that it complies with international standards;
- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police reform and judicial accountability;
- Run campaigns to raise public and political awareness of human rights, justice and equality issues;
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

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1. Introduction

Since its foundation in 1976, the Irish Council for Civil Liberties (ICCL) has campaigned consistently for a more accountable and human rights compliant police service.

In 2006, it produced the report *“Implementing Morris, An Agenda for Change; Placing Human Rights at the Core of Policing in Ireland”* in which it called for the creation of an independent policing authority to provide civic oversight of policing in Ireland.

For the past eight years, the ICCL has been represented on the Garda Commissioner’s Strategic Human Rights Advisory Committee (SHRAC), on which it serves as an independent member alongside the Equality Authority, the Irish Human Rights Commission, Amnesty International (Irish Section) and senior operational members of An Garda Síochána. Matters on which the ICCL has provided advice to SHRAC include: the development of a human rights monitoring framework and auditing tools; training and development and human rights proofing of policy and practice.

The ICCL welcomes the opportunity to contribute to this public consultation on establishing an independent policing authority, a development that it considers is long overdue.

2. Options for the establishment of an independent Policing Authority

a. Functions and responsibilities

What is missing from current Garda oversight structures is civic oversight in the form of an independent policing authority. The new authority should have an oversight role on issues including the allocation of Garda contracts, management performance, the setting of clear performance goals to which the Commissioner would be accountable on an annual basis, and the appointment of senior Garda officers, up to and including the Commissioner.

Once established, the policing authority should play a role in setting priorities and monitoring compliance with human rights principles. The authority, with the input and consultation of the Commissioner, should also draw up the strategic and annual policing plans. Further, the Commissioner should be held accountable by the authority for the performance of his or her functions in accordance with the strategic and annual policing plans.

b. Appointment and membership

If it is to break the historic cycle of unwholesome Ministerial influence on policing, Ireland's new policing authority must be fully independent. This means that particular attention should be paid to the appointments process and to the qualities that authority members will bring to the role.

A transparent and fully independent recruitment process should be used to appoint the members of the authority. This should go beyond merely calling for expressions of interest and preferably should be conducted by the Public Appointments Service (PAS). Following the model proposed in the Irish Human Rights and Equality Commission Bill 2014,¹ the relevant Minister should be obliged to recommend candidates proposed by PAS to the Government for appointment and the members should be formally appointed by the President of Ireland, after a resolution of both Houses of the Oireachtas.

In line with the approach adopted in Scotland, the ICCL considers it is essential that only persons who genuinely have skills and expertise relevant to the functions of the authority be appointed to it.² Subject to that caveat, membership should be diverse and drawn from a cross-section of society, including the public, private and not-for-profit sectors. A particular effort should be made to encourage applications from members of vulnerable or disadvantaged groups with a direct interest in the improvement of existing policing practices.

The Council considers that it would be preferable if the new authority were to consist exclusively of independent members (as is the case in Scotland) rather than a mixture of independent members and politicians nominated by their parties / groupings (as is the case in Northern Ireland). The Policing Board of Northern Ireland was established in a very particular historical political context that is not replicated in this jurisdiction and the ICCL considers that political engagement with policing is best retained within existing Oireachtas structures (see section c. below).

c. Relationship with the Department of Justice, Government and the Oireachtas

To ensure that the new policing authority will play its part in addressing some of the systemic dysfunctions identified by Sean Guerin SC in his recent report,³ it will be essential that its relationship with the Department of Justice be robust.

¹ See section 13 of the Irish Human Rights and Equality Commission Bill 2014.

² See section 2(2) of Part 1 of Schedule 1 of the Police and Fire Reform (Scotland) Act 2012.

³ Report by Mr Sean Guerin SC on a Review of the Action Taken by An Garda Síochána Pertaining to Certain Allegations Made by Sergeant Maurice McCabe. Available at: <http://www.merriionstreet.ie/wp-content/uploads/2014/05/Final-Redacted-Guerin-Report1.pdf>

The ICCL considers that the ongoing review of the extent to which the Department of Justice is fit for purpose should consider explicitly which powers and functions currently vested in the Garda Policy Division of the Department should be transferred to the authority.

As regards the authority's relations with Government / the Minister for Justice, the ICCL considers that the authority should take the place of the Minister in exercising equivalent powers to those currently contained in Section 20(1) and (2) of the Garda Act 2005 Act (setting out "priorities" for the Gardaí in performing its functions; establishing "performance targets" for the Commissioner) and in Section 21 of that Act (receiving "strategy statements" from the Commissioner for approval). Statutory references to the Garda Commissioner being obliged to take account of "relevant government policy" should be excised from the 2005 Act.

The new authority's relationship with the Oireachtas should take place within existing parliamentary oversight structures. The authority should present its annual report to the Oireachtas Joint Committee on Justice, Defence & Equality, to which it might be invited, from time-to-time, to outline its key priorities, objectives and related strategies. The use of the resources of the authority should be overseen by the Oireachtas Committee of Public Accounts, with the Chair of the authority or its Chief Executive being appointed as accounting officer for that purpose.

d. Implications for the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate

Ireland is one of a small number of jurisdictions fortunate enough to enjoy a system of independent investigation of complaints against the police. However, although the Garda Act 2005 (Parts 3 and 4) places GSOC on a solid legal footing, aspects of GSOC's powers have proven problematic to operate in practice.

The ICCL considers that the capacity of GSOC to contribute to the prevention of future Garda misconduct would be enhanced if section 106 of the Garda Act 2005 were to be amended to permit the Ombudsman Commission to carry out reviews of practices, policies or procedures on its own initiative, rather than solely at the Minister's behest.

Another significant gap in GSOC's powers is that, at present, it is precluded by section 87(3)(a) of the 2005 Act from carrying out investigations into "a complaint in so far as it relates to the general direction and control of the Garda Síochána by the Garda Commissioner". In view of the ICCL, recent events amply demonstrate the need to end this exclusion of the Garda Commissioner from the investigative mandate of GSOC.

Part 5 of the Garda Act 2005 establishes the Garda Síochána Inspectorate. Although the Inspectorate has produced some very useful reports, it is not an independent body with the requisite powers to compel compliance with its recommendations on best practice.

As section 117(2) of the 2005 Act makes clear, the functions of the Inspectorate are:

“(a) in furtherance of its objective to carry out, at the request or with the consent of the Minister, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána,
(b) to submit to the Minister—
(i) a report on those inspections or inquiries, and
(ii) if required by the Minister, a report on the operation and administration of the Garda Síochána during a specified period and on any significant developments in that regard during that period,
and
(c) to provide advice to the Minister with regard to best policing practice.”

In other words, as currently constituted, the Garda Inspectorate is a creature of the Minister. The ICCL recognises the exceptionally high calibre of the international policing experts who have worked for the Garda Inspectorate but considers that, in future, the Inspectorate’s policing oversight functions would be better allocated to GSOC and to an independent policing authority.

Once GSOC has been granted the power, on its own initiative, to conduct reviews of practices, policies and procedures, this aspect of the Inspectorate’s work could be allocated to the Ombudsman Commission. Any residual aspects of the current advisory/oversight role of the Inspectorate could then be assumed by the new policing authority.

3. Recommendations

The ICCL recommends that:

- **an independent policing authority be established, with the following functions:**
 - **an oversight role in the allocation of Garda contracts; management performance and the setting of clear performance goals to which the Commissioner would be held accountable;**
 - **supervise the appointment of senior Garda officers, up to and including the Garda Commissioner;**
 - **set priorities and monitor compliance of An Garda Síochána in accordance with human rights principles;**
 - **in consultation with the Garda Commissioner, draw up strategic and annual policing plans.**
- **a transparent and fully independent recruitment process be used to appoint the members of the authority;**

- only persons who genuinely have skills and expertise relevant to the authority be appointed to it; subject to this caveat, membership to be diverse and drawn from a cross section of society, including public, private and not-for-profit sectors. A particular effort be made to encourage applications from members of vulnerable or disadvantaged groups;
- the ongoing review of the extent to which the Department of Justice is fit for purpose consider explicitly which powers and functions currently vested in the Garda Policy Division are to be transferred to the independent policing authority;
- the policing authority assume equivalent powers to those currently vested in the Minister by virtue of sections 20 and 21 of the Garda Act 2005;
- the authority's relationship with the Oireachtas take place within existing parliamentary oversight structures, with an information link to the Oireachtas Joint Committee on Justice, Defence & Equality and an accounting connection to the Oireachtas Committee of Public Accounts;
- GSOC be empowered, on its own initiative, to conduct reviews of policing practices, policies and procedures and assume the analogous review functions of the Garda Inspectorate;
- the Garda Inspectorate, which is not an independent body, be abolished and any residual aspects of its current advisory/oversight role be allocated to the new policing authority.

**Submission of IHREC (Designate) to the
Cabinet SubCommittee on Justice on the
Establishment of an Independent Policing
Authority**

May 2014

I. Introduction

- 1) The Irish Human Rights Commission (“IHRC”) was established pursuant to the Human Rights Commission 2000. Its functions include reviewing the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and making recommendations to Government thereon. The Irish Human Rights and Equality Commission Bill 2014 envisages the merger of the Equality Authority and the IHRC into a single enhanced body whose functions will include the functions of reviewing law and practice and making recommendations to Government thereon.
- 2) The IHREC (Designate) welcomes the opportunity to make the present written Submission to the Department of Justice and Equality and welcomes the commitment by Government for the establishment of an independent Policing Authority.
- 3) Accountability in the policing structure of the State has been a significant theme in the work of the IHRC since its inception and a number of policy statements and legislative observations have been published which underline the importance of a human rights compliant police service in the State.¹ This is unsurprising given the IHRC’s genesis in the Good Friday Agreement and the influence of the Patten Report and attendant policing reforms introduced in Northern Ireland. The principle of equivalence of rights North and South is a key principle in the Good Friday Agreement.
- 4) Significantly, the IHRC commissioned a substantial piece of research by Professor Dermot Walsh in relation to human rights and An Garda Síochána, which was published as a book in 2009 entitled *Human Rights and Policing in Ireland: Law Policy and Practice*.² Many of the issues examined in that book, and previous contributions on policing matters by the IHRC, have relevance to the matters being considered in the context of developing an independent Policing Authority.
- 5) The IHRC and its sister body, the Equality Authority, are represented on the Strategic Human Rights Advisory Committee of An Garda Síochána (“SHRAC”), which is chaired by an Assistant Garda Commissioner. The establishment of SHRAC is part of the efforts of An Garda Síochána to incorporate and mainstream human rights and equality protections in the policies and procedures of the organisation. The IHRC and the Equality Authority also engage in training of Gardaí, although this is not as yet formalised in the Garda training curriculum.

¹ See for instance, *A proposal for a New Garda Complaints System*, IHRC, December 2002; *Observations on the Scheme of the Garda Síochána Bill 2003*, IHRC, November 2003; *Observations on the Scheme of the Garda Síochána Bill, 2003*, IHRC, February 2004; *Policy Statement: Human Rights Compliance of An Garda Síochána*, IHRC, April 2009.

² *Human Rights and Policing in Ireland*, Walsh, Dermot, Clarus Press, 2009.

- 6) This submission makes proposals on the establishment of an independent Policing Authority, in particular, it will consider the functions and responsibility of the Authority, the appointment and membership of the Authority, its relationship with Government and the Oireachtas; and the possible implications for An Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate.

II. Functions and Responsibility of the Policing Authority

- 7) The independence of the police service from executive control is central to the credibility and the capacity of the police service to protect human rights. The IHRC has previously stated that effective oversight bodies, coupled with transparency and engagement with the community, are core mechanisms of human rights accountability. As far back as 2004, in considering the Garda Síochána Bill preceding the 2005 Act, the IHRC argued that the vesting of oversight and appointment functions with an independent and representative agency, such as a Police Authority, as recommended by the Patten Report, could make a valuable contribution to the promotion of human rights within Irish policing.³
- 8) Issues of national security policing should be overseen by an independent body. The IHRC has previously recommended that GSOC be permitted to examine complaints against gardai even where issues relating to national security are involved. Apart from complaints from members of the public, the Authority should be authorised to oversee issues relating to national security policing, including stipulating policies and procedures which should apply where national security policing impacts on the fundamental rights of individuals. The Authority should also have a liaison role with any Oireachtas committee which has competence in the area of national security policing review. The presence of independent bodies to provide oversight on this issue is a requirement of the European Convention on Human Rights and lessens the risk that the State may be found in violation of the Convention in particular cases.
- 9) The IHREC (Designate) would draw attention to the fact that the issue of police accountability is given detailed expression in the European Code of Police Ethics.⁴ Section VI of the European Code of Police Ethics is exclusively concerned with accountability and control of the police.⁵ Article 59 of the European Code provides that “[t]he police shall be accountable to the state, the citizens and their representatives. They shall be subject to sufficient external control.” Likewise, the Patten Report emphasises the importance of the police being accountable to the citizens as well as the State.⁶ The Patten Report identifies five aspects to accountability: (1) democratic accountability, by which the police are accountable to the elected representatives; (2)

³ See, *Observations on the Garda Síochána Bill, 2004*, at p. 1.

⁴ *The European Code of Police Ethics*, Council of Europe Recommendation, Rec (2001) 10.

⁵ See also Articles 12, 16 and 17 of the European Code of Police Ethics.

⁶ Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999.

transparency, by which the community is kept informed; (3) legal accountability in the event of abuse of police powers; (4) financial accountability; and (5) internal accountability, by which officers are accountable within a police organisation.⁷ The Patten Report states that “[a]ll these aspects must be addressed if full accountability is to be achieved, and if policing is to be effective, efficient, fair and impartial”⁸ There is an additional aspect of accountability which is increasingly evident in the years since the publication of the Patten Report, namely the responsibility of the State Parties to the European Convention on Human Rights to ensure that proper accountability structures exist within their police forces to ensure: effective investigations following suspicious deaths (Article 2); proper planning and oversight of police operations to address foreseeable risks of human rights violations (Articles 2, 8, 13) and proper complaints mechanisms following any human rights violations that can occur at the hands of police (Article 13 when read in conjunction with Articles 2, 3, 8 and 14).

10) In particular, the IHREC (Designate) recommends that the Policing Authority should include within its statutory remit, the following functions and responsibilities:

- (a) Supervise the functioning of the Garda Commissioner’s Office and supervise the discharge of functions by the Commissioner including supervision of national security policy and practice;
- (b) Appoint, supervise and, where appropriate, discipline senior management within An Garda Síochána, including the Garda Commissioner, the Deputy Garda Commissioner and Assistant Garda Commissioners.⁹ Such office holders should be fully accountable to the Authority for the performance of their functions and be liable for removal from office by this body if warranted;
- (c) Establish policies or procedures for An Garda Síochána, including the issuing of policy Directives;
- (d) Cause to be published and made accessible to the public all sections of the Garda Code and Garda operational policies and procedures, with the exception of certain clearly-defined tactical and/or security-related procedures;¹⁰
- (e) Review the adequacy and appropriateness of the policies and procedures which underpin the operation of an effective policing service;
- (f) Monitor and address human rights and equality compliance by An Garda Síochána at every level of its operations and align breaches of service/discipline or criminal offences identified by GSOC and which would also

⁷ *Ibid*, at p. 22.

⁸ *Ibid*.

⁹ In addition, there should be express provision for the consideration of external applicants to such posts.

¹⁰ An Garda Síochána are currently outside the scope of the Freedom of Information Act, 2000. It is noted that freedom of information legislation in Northern Ireland requires the police service to publish their written policies. As a result, considerable progress has been made in Northern Ireland regarding the publication of police policies and codes of practices.

reveal a breach of human rights or a discriminatory act with disciplinary procedures within the force.¹¹

- (g) Review the adequacy of standards in relation to the training of An Garda Síochána and the structures, policies and procedures for assessment and development of those standards, with a very specific emphasis on training in human rights and equality;
- (h) Set objectives and performance targets for An Garda Síochána and monitoring and reporting on the achievement of those targets, including in relation to human rights and equality compliance;
- (i) Ensure An Garda Síochána continuously improves performance;
- (j) Consult with the community to obtain their views on policing and make arrangements to ensure their co-operation with the police in preventing crime.
- (k) Liaise with the National Preventative Mechanism established under the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (OPCAT) and ensure that its recommendations relating to policing services are addressed.

In order to discharge these functions, the Authority should be ensured a stable and sufficient budget over which it has autonomous control. The Authority should have control over the selection and appointment of its own staff.

III. Appointment and Membership of the Authority

- 11) To ensure that the independence of the Policing Authority from the executive is real and not illusory, the members of the Authority should be chosen and appointed through an open and transparent process. To ensure a stable mandate the appointment of members should be expressly set out in the legislation and members should serve for a specific duration. Although, the mandate may be renewed, it is recommended that the diversity of its members is ensured. The policies, procedures and criteria for the selection and terms of appointment of the members should be documented and readily available to aid transparency and attract appropriate candidates.
- 12) In addition, the composition of the Policing Authority and the appointment of its members should be in accordance with a procedure which allows for a pluralist and independent Authority, which may be ensured by the appropriate oversight and input of the Oireachtas. There should be representation from different sectors of society, including minorities and representatives from the community more generally.¹² The Authority should also be gender balanced. There is also scope for political

¹¹ It is noted that the Irish Human Rights and Equality Commission Bill, 2014 includes a duty on public bodies at section 42 to “have regard to” the elimination of discrimination, promotion of equality and to protect the human rights of its members, staff and the persons to whom it provides services, which will also apply to An Garda Síochána.

¹² The nine grounds covered by the equality legislation may be a useful reference in this regard, as well as taking into account the needs of certain geographical communities.

representatives to be on the Authority, although such representatives should not form a majority. There should also be a representative from the Department of Justice and Equality.

IV. Its relationship with the Government and the Oireachtas

- 13) The Authority should have an organic link, and be directly accountable to the Oireachtas, rather than a Government Department. There is limited usefulness in severing the Commissioner's linkage with the Minister for Justice and Equality, if it is intended to restore this linkage at the Authority's level. Consideration should be given for a separate vote for the Authority to ensure it can discharge its functions. The Authority should be in a position to feed into the everyday detailed work of Parliament, particularly the Joint Committee on Justice, Defence and Equality and the mooted subcommittee on Human Rights and Equality. The Authority can in this way be accountable to Parliament in the discharge of its functions.

V. Implications for GSOC, the Garda Síochána Inspectorate and the Confidential Recipient

- 14) The functions of the Police Authority must be calibrated in such a way as not to encroach or undermine the work of GSOC, but rather should compliment and support it. The Policing Authority should have a defined relationship with GSOC that reinforces the independence of the latter, while allowing the Policing Authority to bring to the attention of GSOC matters of concern that might warrant an investigation by GSOC. In particular, there should be alignment of disciplinary procedures which flow from GSOC investigations including, where serious allegations arise, the placing of officers under suspensive sanction (such as placing the member concerned on administrative leave pending judgment in criminal offences.)
- 15) The IHREC (Designate) has recommended that GSOC be insulated from Ministerial control and that it be independent in its functioning and budget. Rather than reporting to the Minister, it is recommended that GSOC be structurally linked to the Authority to allow for the implementation of its recommendations to be reviewed by the Authority. However, GSOC should itself be accountable to the Parliament by appearing before Parliamentary committees as required.
- 16) The Garda Síochána Inspectorate, established under Part 5 of the Garda Síochána Act, 2005, would need to be realigned with any new Policing Authority, in order to ensure that reporting procedures are through such an Authority and not the executive as is the case at present. The functions of the Inspectorate should be set out in amending legislation with issues of structural or systemic concern capable of being referred to the Inspectorate by the Authority.

- 17) Similarly the Authority should be functionally linked to the Office of the Confidential Recipient, whether that office is merged with another body or remains stand-alone. In particular, issues of systemic importance arising from confidential reporting by members should be capable of being captured in the Authority's ongoing review of policing practice and its development of policy and practice to strengthen human rights and equality observance within the Service. Such confidential reporting should also be capable of corroborating complaints made by members of the public to GSOC, subject to procedural safeguards relating to the use of confidential information provided.

V. Conclusion

In conclusion the IHREC (Designate) would make the following recommendations:

- 1. That the State establish an independent oversight authority in respect of the operation of An Garda Síochána that would ensure public confidence and trust in An Garda Síochána and minimise political influence in the operational aspects of the work by An Garda Síochána;**
- 2. That the Authority's statutory remit should include the functions and responsibility as set out at paragraph 9 (a) to (k) of this submission;**
- 3. That the appointment of members to the Authority is through an open and transparent process, with the appropriate oversight of the Oireachtas**
- 4. That the appointment of its members should be in accordance with a procedure which allows for a pluralist and independent Authority;**
- 5. That the Authority is independent from Government, and that it is democratically accountable to the Oireachtas;**
- 6. That the Authority should have a defined relationship with GSOC that ensures GSOC maintains independence, but at the same time allowing for monitoring of GSOC recommendations by the Authority on all matters of concern which may warrant an investigation by GSOC.**
- 7. That the Authority should have a defined relationship with the new National Preventive Mechanism mooted under OPCAT.**
- 8. That the Authority should be functionally linked to the Office of the Confidential Recipient.**



Irish Road Victims Association

‘Change doesn’t just happen, it is propelled by men and women whose spirits are provoked and inspired to make a difference’ – NGO ‘Brussels Declaration’.

IRVA Submission to the Dept of Justice Reform Unit, Dept of Justice & Equality - on the establishment of an Independent Policing Authority in Ireland

May 2014

Dear Sirs,

Thank you for your invitation to members of the Victims Rights Alliance to make a submission to you.

Members of the Irish Road Victims’ Association have lost a loved one in a road traffic collision or have been seriously injured in a collision themselves.

We very much welcome the establishment of an Independent Policing Authority as the current system has failed to meet the needs of Road Traffic Victims.

When a Victim of a road traffic collision becomes aware that the collision in which their loved one was killed has failed to meet a required standard they have nowhere to turn. There is nobody in the system as it currently exists, looking out for the interests of the Road Traffic Victim, or the Bereaved family. The Gardai liaise with the DPP while also acting as Agents of the Coroner. The Victim is completely outside of this process and the Coroner’s inquest is unduly restrictive.

As a Victim you are invited to make a complaint to the Garda Ombudsman Commission ‘if you are directly affected by the conduct of a member of the Garda Siochana that you believe is misbehaviour’. Does a failure to adequately investigate a road traffic collision qualify as ‘misbehaviour’?

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Committee: Donna Price, Founder & Chairperson, Noel O’Callaghan, Vice Chairperson,
Dawn Clarke, Secretary, Catherine Flaherty, Joint Secretary, Alan Graham, Treasurer,
Donal O’Donoghue, Road Crash Prevention, Loretta Cowen-Kearney, Bereavement Support.



Irish Road Victims Association

We are advised that ‘The Garda Ombudsman Commission’s role and functions are limited under the provisions of the Garda Síochána Act, 2005. Under this legislation, the Garda Ombudsman does not have the remit to examine the efficient or effective operation of the Garda Síochána nor can the Garda Ombudsman adjudicate on the adequacy of a Garda investigation unless there are clear allegations of misbehaviour involved.’

We are further advised that, ‘bearing this statutory position in mind, the Garda Ombudsman’s determination not to admit our complaints is based on the Commission’s view that the Garda conduct in our case(s) does not meet the threshold for admissibility.’

In reaching its decision, the Garda Ombudsman Commission also takes into account the fact that Garda files were submitted to the Office of the Director of Public Prosecutions and whether that Office decided to bring prosecutions, or not. The Coroner may do likewise when deciding whether to admit questions relating to the Garda investigation at the Coroner’s inquest into the death.

IRVA therefore wishes to place our concerns on record in this submission regarding the adequacy of the entire investigation process, in terms of the State’s obligation under Article 2 of the European Convention on Human Rights (which requires an effective investigation into all instances of suspicious deaths).

Where an investigation is inadequate, families have no recourse to an effective remedy and all of this adds to their pain and suffering. The ‘system’ fails them.

GSOC is at present, in our view, restricted unduly under the Garda Síochána Act 2005 and therefore fails in their mission ‘to provide and promote an efficient, fair and independent oversight of policing in Ireland’ and in their vision to ‘be an active driver of ever-improving police accountability’.

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Irish Road Victims Association

The United Nations Human Rights Council Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, following her mission to Ireland November 2012, stated:

“While the Special Rapporteur welcomes the existence of the Ombudsman Commission to ensure the accountability and independent oversight of the police, she expresses concern at the serious constraints faced by the body, including financial and resource limitations, and the reported limited public awareness of its activities and responsibilities. While she takes note of the powers of the Commission to conduct public interest investigations into the behaviour of the police in accordance with section 102(4) of the Garda Síochána Act (2005), she remains concerned at the Commission’s excessive dependence on the Ministry of Justice and Equality when it comes to opening investigations relating to the practices, policies and procedures of the police, which requires permission from the Minister, as laid out in section 106 of the mentioned Act. The Special Rapporteur recommends that this provision be removed from the Garda Síochána Act (2005) in order to grant the Commission independent investigative powers.”(<http://www.ohchr.org/EN/Countries/ENACARegion/Pages/IEIndex.aspx>)

It is the experience of our Members that while GSOC felt that an examination of the Garda investigation into the deaths of our loved ones in road traffic collisions may have been required; the legislation was very restrictive and indeed prohibitive. In some cases, they have requested that the Minister and the Garda Commissioner agree to an examination of the files, without fear of their (GSOC) being challenged in the courts, but no agreement to such reviews was forthcoming

The legislation needs to change to enhance GSOC and any new Policing Authority, statutory power to carry out their work, without fear of court challenges. The Garda Commissioner must also be brought within their remit.

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Irish Road Victims Association

Restrictions in relation to the timeframe in which complaints must be made should also be removed from the Act as these are unduly prohibitive. There is a 6 month limit in legislation at present. In most cases, a file has not been submitted to the DPP within this timeframe and the Victims and Bereaved families have no information. The normal statute of limitations should be considered in such cases, with special consideration for complaints received outside of this timeframe.

We appreciate the opportunity to make a submission to you and we are encouraged that there is now a willingness to improve the situation of crime victims. We very much welcome the establishment of a new Independent Policing Authority as it is very much needed and will help to fill a vacuum which exists for our families at present. There must be a Body to whom Victims of crime have some recourse when they are let down by enquiries into their loved one's death.

We would welcome an opportunity to meet with you and with Minister Fitzgerald to discuss our concerns in more detail.

Yours sincerely,

For Irish Road Victims' Association

Donna Price

Donna Price, Chairperson

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Law Society of Ireland

Submission of

The Law Society of Ireland

**Consultation on the establishment of an Independent Policing
Authority**

Department of Justice and Equality

20 June 2014

1. Introduction

The Law Society of Ireland welcomes the opportunity to contribute to the Government's public consultation on establishing an independent policing authority in Ireland. Reform is undoubtedly now necessary. In recent months, human rights failures have been demonstrated as regards:

1. serious and repeated breaches of privacy rights with the recording of telephone conversations between clients and solicitors in garda stations,
2. inadequate facilitation of access to legal advices with regard to the Gormley and White decisions and the subsequent DPP direction to allow solicitors attend interviews and
3. inadequate whistleblower procedures and protections.

It appears that, in spite of policing reform through An Garda Síochána Act 2005, systemic failures have resulted in constitutional and human rights breaches. A root and branch review of policing and a review of policing oversight is now required.

The Law Society's Submission contains general principles which it is hoped will significantly contribute to reform in this area irrespective of the final methodology and shape of such reform. The Law Society would welcome the opportunity to further contribute to this important debate as the Government develops a new policing and policing oversight policy for Ireland.

PART I of this submission defines the Law Society's priority recommendations for policing reform.

PART II sets out the Law Society's recommendations as regards each of the "options" as identified by the Government in its invitation for public consultation, namely:

- Functions and responsibilities of a policing authority
- Appointment and membership of a policing authority
- The relationship of a policing authority with the Government and the Oireachtas
- The implications for Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate

Recommendation 1 – Redefine the role of An Garda Síochána: this is necessary to define, shape and structure oversight objectives

An Garda Síochána plays a vital role in Irish society. The role was neatly summarised by the first Garda Commissioner who believed that the success of the newly formed police force would be achieved not by a force of arms but by showing "moral authority as servants of the people"

International best practice in independent policing can provide useful templates in the fields of human rights, independence, oversight and accountability; nonetheless, the historic and cultural place of An Garda Síochána in Irish society should not be overlooked in applying that best practice into Irish policing.

Recommendation 2 – Recognise and protect the important role of solicitors to advise individuals in contact with An Garda Síochána

Solicitors play a central role in ensuring that the rule of law is respected and upheld – particularly for individuals requiring advice in criminal matters. Provision of adequate legal aid to suspects in detention must be a key priority for the Government if it wishes to safeguard a fair society and ensure its integrity.

Undoubtedly, disputes will arise as to the treatment of solicitors attending interviews and the treatment of suspects in detention. An independent policing authority must put mechanisms in place for the oversight and resolution of any such disputes, taking into account constitutional and human rights norms. Solicitors have an important role to play within this framework and to advocate for its users.

The Law Society believes that protections should;

1. ensure adequate legal assistance for suspects in detention through sufficient legal aid provision,
2. raise awareness among members of An Garda Síochána of the importance of ensuring access to legal advice for suspects in detention and
3. establish robust mechanisms for the oversight of disputes as to the treatment of solicitors attending interview and the treatment of those in detention.

Recommendation 3 – Implement OPCAT without delay, to facilitate independent inspection of places of detention

The Government has yet to implement the Optional Protocol to the United Nations Convention Against Torture (“OPCAT”) through the introduction of a National Preventive Mechanism which would allow for independent inspections of all places of detention, including Garda Stations. The Law Society strongly recommends the implementation by Ireland of OPCAT without delay.

Recommendation 4 – Make accountable the exercise of An Garda Síochána statutory powers which interfere or restrict fundamental human rights safeguards and constitutional rights

An independent policing authority must have particular oversight over An Garda Síochána’s statutory powers which have the effect of removing, limiting or interfering with the constitutional and fundamental human rights of individuals. Such statutory powers include the use of covert surveillance methods and further powers under the new DNA Database framework.

Powers which limit and interfere with privacy rights must be exercised in an accountable manner with appropriate oversight.

Recommendation 5 – Make Garda Vetting Procedures Compliant with the European Convention on Human Rights (the “ECHR”)

As the current Garda Vetting Unit does not operate pursuant to any specific statutory power, it interferes with an individual’s Article 8 ECHR privacy rights.

In light of UK case law on this issue the current policy for disclosure may be too broad in particular as regards the release of information about unsuccessful and pending prosecutions. While UK case law concerns Article 8 ECHR privacy rights, in Ireland there may also be other Irish constitutional rights of relevance, for example, due process and fair procedure rights such as the presumption of innocence.

The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 may resolve the potential privacy and other rights breaches posed by the current procedure; however this legislation has yet to be commenced. The new statutory procedure, if commenced, would facilitate the disclosure of information relating to criminal offences and criminal records regarding non-successful prosecutions only where such information is specified by statute. “Specified information” is defined by section 2 of the Act and may be a more proportionate approach than the current *ad hoc* procedure.

The Law Society recommends that Garda vetting procedures be reviewed as soon as possible.

Recommendation 6 – Implement Ireland’s ECHR duties as regards police planning and oversight

The Law Society recommends that the policy which will establish an independent policing authority in Ireland must implement Ireland’s ECHR duties as regards appropriate planning and oversight of police operations to prevent, remedy and repair police human rights violations. The IHRC Submission on the Garda Síochána Act echoes this sentiment by calling for signatories to the ECHR to

ensure that proper accountability structures exist within their police forces to ensure...proper planning and oversight of police operations to address foreseeable risks of human rights violations (Articles 2, 8, 13) and proper complaints mechanisms following any human rights violations that can occur at the hands of police (Article 13 when read in conjunction with Articles 2, 3, 8 and 14).

Recommendation 7 – Adopt a human rights based approach supported by human rights proofing, contributed to by solicitors

Human rights must be at the centre of policing and oversight reform.

The 2006 ICCL Report *[Implementing Morris - An Agenda for Changes: Placing Human Rights at the Core of Policing in Ireland]* recommends the following:

- Human rights should be made central to the management of the Gardaí.
- Human rights monitoring framework should be devised for the Garda Síochána;
- As a matter of urgency, all current Garda policies and practices should be human rights proofed.

Law Society members have professional expertise in the areas of human rights and criminal justice. We should be delighted to bring this expertise to assist in the incorporation of human rights standards into policing policy through membership of, or engagement with, the Strategic Human Rights Advisory Committee of An Garda Síochána (SHRAC).

Functions and responsibilities of a policing authority (and An Garda Síochána itself)

Recommendation 8 – Ability to initiate its own reviews of practice, policies or procedures without need for political authorisation

An independent policing authority must be able to review policing practices, policies and procedures on its own initiative without the need for Ministerial approval, as is the existing situation pursuant to Section 106 of the Garda Síochána Act 2005.

Recommendation 9 – Oversight of Code of Ethics/Standards supported by a robust complaints mechanism

All Garda Síochána Codes or Standards should be overseen by an independent authority with responsibility for standard setting, individual complaint handling as well as systemic lapses in Garda discipline.

Good policing practice, accountability and independent oversight must be underpinned by international standards and codes.

Consideration must be given to ceasing the practice whereby complaints other than those relating to death or serious harm are dealt with by An Garda Síochána.

Recommendation 10 – Adequate whistleblowing mechanisms and whistleblower protection

The Law Society believes that mechanisms for whistleblowing and the protection of whistleblowers must be envisaged in the development of an independent policing authority. The IHRC emphasises “whistleblowing is an important safeguard for accountability”.

Appointment and membership of a policing authority

Recommendation 11 – Independent and transparent appointment and membership

The appointment and membership of an independent policing authority must be politically independent and transparent.

The relationship of a policing authority with the Government and the Oireachtas

Recommendation 12 – Independent and transparent appointment and management of senior An Garda Síochána roles

Currently, An Garda Síochána management team members, such as the Commissioner, Deputy and Assistant Commissioner positions, are political appointees who can also be removed for a variety of reasons.

The Law Society believes that the appointment, management and removal of senior staff members should be independent of the political infrastructure. Independent and transparent processes should be introduced with accountability vested in a politically independent body.

Recommendation 13 – Enact oversight mechanisms to ensure an independent and accountable A Garda Síochána in line with internationally recognised best practice standards

The Law Society believes that appropriate oversight measures must be put in place as soon as possible to ensure an independent and an accountable police service in Ireland.

In respect of independence of a proposed policing authority, the Law Society urges that the benchmarks contained within the UN Paris Principles be applied.

The Law Society recommends, as does the Irish Human Rights Commission, that the principles contained in the following international instruments guide the framework for police accountability.

Article 59 of the European Code

“The police shall be accountable to the state, the citizens and their representatives. They shall be subject to sufficient external control.”

The Patten Report

The Patten Report identifies five aspects to accountability as follows:

- 1. democratic accountability, by which the police are accountable to the elected representatives*
- 2. transparency, by which the community is kept informed*
- 3. legal accountability in the event of abuse of police powers*
- 4. financial accountability*
- 5. internal accountability, by which officers are accountable within a police organisation*

Recommendation 14 – Adequate and ring fenced resourcing to ensure real political independence

The Law Society recommends that the allocation of adequate resources must be guaranteed to some extent so as to ensure independence cannot be tempered by threats of funding withdrawal.

The Law Society welcomes the opportunity to work with the Department in its on-going consideration of this important issue and remains available to meet with officials to clarify any of the matters raised within this submission.

For further information please contact:

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National Association of
Regional Game Councils

Independent Policing Authority

The National Association of Regional Game Councils (NARGC), which was founded in 1968, is the largest organisation in Ireland involved in game hunting and conservation. It represents and defends the interests of countrysports in general and the interests of game shooting enthusiasts in particular in the Republic of Ireland. It has 27,000 members in almost 1,000 clubs spread throughout the country – one club in almost every parish. The Association's clubs are *"Recognised Bodies"* under the Wildlife Act 1976, a unique statutory recognition which means they can initiate prosecutions for breaches of the wildlife acts. The NARGC is also a Seanad *"Nominating Body"* on the Agricultural Panel which means it is entitled to nominate two persons for election to the Upper House of Parliament (the Seanad). The Association has contributed to major legislative reforms in the areas of conservation, hunting and firearms ownership over many years. NARGC subscribes to the principle of *"Wise and sustainable use of renewable natural resources"* and works with a wide variety of organisations to achieve a balanced approach to such use.

At an international level, through FACE Ireland, NARGC is closely aligned with the *Federation of Associations for Hunting and Conservation of the EU (FACE)* which is based in Brussels and represents the interests of 7 million hunters in 36 countries at the level of the European Union.

At the outset, the NARGC wholly welcomes the proposal to establish an Independent Policing Authority for the Republic of Ireland. Dealing as it does in representing the interests of citizens who are subject to a statutory licensing regime for participation in their sport of choice, a licensing regime which is administered by An Garda Síochána (AGS), the Association has had vast experience in dealing with issues arising from such licensing. By way of background, please see the attached critique. While it is not intended to in any sense address the specific instances contained therein in this submission, the issues are nonetheless symptomatic of the consequences of how An Garda Síochána carries out its functions and will assist in placing this submission in context.

We believe there are three underlying principles which strongly influence Gardai in how they discharge their functions – financial accountability, administrative accountability and measurable reward for professionalism. Unfortunately, the operations of AGS have all too often been characterised by the absence of any real accountability in a whole range of areas resulting in a series of malpractices, erosion of citizens' rights and even criminality. Many of these matters are now well publicised and have given rise to the proposal to establish the Independent Policing Authority. Accountability means there must be sanctions, not just for the institution, but for those individuals who are charged with its management and with decision making authority.

In the conduct of the functions of state in a democracy, but particularly the functions of policing, it is imperative that the citizens have confidence that the police force act transparently, accountably, in accordance with both the letter and the spirit of the law and fairly i.e. without prejudice. Unfortunately, An Garda Síochána has not scored well under these headings in recent years resulting



in a rapid erosion of confidence in AGS. This erosion of confidence is widely apparent not just among ordinary citizens, but also among large numbers of Oireachtas Members.

We submit:

1. Finance:

The force must be truly accountable for the finances allocated to it from the Exchequer i.e. the taxpayer. At present, it would appear there is no accountability whatsoever. If there was, the public would surely be aware of the sanctions which ought to have been imposed for the myriad of activities which have come to light and which have cost the taxpayer literally millions, not just recently but since as far back as the Frank Shortt case and further. Furthermore, in the case of firearms licensing, the Gardai have continued to defend quite indefensible court appeals against unlawful licence refusals to the extent that over 600 court challenges (both High and District courts) have taken place in the space of four years, 95% of which have been upheld with consequent implications for the taxpayer. Yet at no point has anyone within the Garda management or the Department of Justice sought take steps to halt the actions which gave rise to the repeated cases and therefore mitigate the taxpayers' exposure and neither has there been any attempt, either internally or externally, to ascertain why licensing officers continued to make incorrect licensing decisions and/or take remedial action. No one has been held accountable. If the Garda Commissioner was truly responsible and accountable for the Garda budget, action would have been taken on the licensing issue long ago which would have had the triple effect of saving the taxpayer from unnecessary exposure, correcting what is clearly an issue of maladministration in the operation of the firearms licensing system and instead of eroding confidence in the Gardai amongst the substantial numbers of firearms owners, strengthening confidence and respect. True financial accountability would in fact address many (not all) of the ills which have been identified. Strict accountability for the Garda budget must come within the remit of the new Independent Policing Authority.

2. Administrative Accountability:

An Garda Síochána is responsible for the implementation, monitoring and administration of many of the state's laws. Its actions and how it discharges its statutory functions are of the utmost concern for the proper administration of justice. In that regard, it is imperative that AGS interprets and applies the law correctly and fairly. It is equally imperative that it monitors such interpretation and application in the context of ongoing evaluation of performance. Failures should immediately cause an examination of where the fault/failure lies and the implementation/imposition of corrective action where shortcomings are identified. This may, at its most innocent, involve further training. However, where there are repeated shortcomings following the corrective action, the principles of accountability should be brought to bear. This means there must be sanctions for repetitive failure.

3. Reward for Professionalism:

For accountability to be effective and fair, a system of recognition for satisfactory/good performance is appropriate. While sanctions for bad or poor performance are well justified, these take on a very focused significance if there is a corresponding reward system for good performance. We would submit that consideration be given to establishing such a reward



system as a positive counterbalance to the rigours of accountability. The cost of a reward system, in whatever form it might take, can be measured against the cost of the recent controversies but it may never be adequately measured against the cost of the loss of confidence in AGS as a result of those controversies.

4. GSOC:

While the idea of GSOC was a very good one when that body was established, it has in reality proved far less effective than the impression heretofore held by most citizens until recently. The policing body for the police force should never refer any complaint back to the force for investigation. If there was ever any doubt on this matter, it was surely completely dispelled by the penalty points controversy and the so called investigation into that matter by a senior Garda officer appointed by the Commissioner. The very notion that GSOC does not have unsupervised access to the PULSE system for its work is nothing more than a form statement of no confidence in GSOC by the Government. This matter is entirely contradictory to the discharge of functions for which GSOC was established and should be addressed without delay. The fact of GSOC'S recommendations of disciplinary sanctions under the Garda Síochána Act, following its investigations, being only possible with the approval of the Commissioner is farcical.

5. The Accountability of the Garda Commissioner:

The Garda Commissioner should be accountable for all matters over which he has statutory oversight. That accountability must be to the new Independent Policing Authority and not to any politician or political institution. Furthermore, in the interests of public confidence and for the removal of any possible doubt that no person is above the law, the position of Garda Commissioner must come within the ambit of GSOC.

6. Promotions:

The practice of promotions to senior positions within AGS being at the discretion of the Government of the day must cease and be subject to a system of transparent merit based assessment. The current system is open to the charge of political patronage and is entirely inappropriate.


Desmond Crofton
National Director,
NARGC

21/5/2014

**RCNI Submission to the Justice Reform Unit on the Proposal to establish an
independent Policing Authority June 2014**



**RCNI Submission to the Justice Reform Unit on the Proposal to
establish an independent Policing Authority**

June 2014

RCNI Submission to the Justice Reform Unit on the Proposal to establish an independent Policing Authority June 2014

Introduction – Rape Crisis Network Ireland Overview:

- 1.0 Rape Crisis Network Ireland broadly welcomes the Proposal to establish an independent Policing Authority.** In our view, an independent police oversight body which draws on a wide range of outside experience as it sets long term goals and supervises their implementation, and which has the necessary powers to ensure that its goals are adhered to, can benefit victims of sexual crimes significantly. This overarching role will become even more important when the EU Directive establishing minimum standards on the rights, support and protection of victims of crime, is transposed into Irish law in November 2015¹. In addition, an independent Policing Authority could do much to ensure that complaint mechanisms addressed victims' concerns about An Garda Síochána swiftly and effectively.

Our own research on attrition of rape victims in the criminal justice system, Rape and Justice in Ireland,² highlighted the difficulties they faced in their interactions with An Garda Síochána when deciding whether to report, and once they had reported, maintaining a formal complaint. **It confirmed our daily experience that how victims are treated by An Garda Síochána is a very significant factor in whether they can initiate and then sustain formal complaints against their attackers.** While there was much very good Garda practice reported, the authors of the report made specific recommendations addressing key victim concerns identified in the research. These were: maintaining ongoing contact between Gardai and victims, providing information, behaving with sensitivity and compassion towards victims, interviewing victims with due regard to the effects of trauma, and never dissuading victims from maintaining a complaint. An Garda Síochána lost no time in incorporating versions of these key recommendations in its Garda Síochána Policy on the Investigation of Sexual Crime, Crimes and Children and Child Welfare, published in April 2010.³

Rape Crisis Network Ireland: Aims, Activities, Goals, Members, Staff

- 2.0 RCNI** is the national representative body for its 13 member Rape Crisis Centres. The RCNI role includes the development and coordination of national projects including data collection, supporting Rape Crisis Centres to reach best practice standards, legal advice and policy development, and using our experience and knowledge to influence national policy and social change. Our member Rape Crisis Centres provide free advice, specialised counselling, advocacy and supports such as Court and Garda accompaniment, for survivors of sexual abuse in Ireland, including a growing number between the ages of 14 and 18.

¹ This Directive may be accessed online through this weblink: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

² "Rape and Justice in Ireland" (2009), Hanly & ors, Liffey Press, Dublin (RAJI). The recommendations may be found in the Executive Summary, available for free download through this link: <http://www.rcni.ie/wp-content/uploads/Exec-Summary.pdf>

³ Available online through this weblink: <http://www.garda.ie/Documents/User/WEB%20Investigation%20of%20Sexual%20Crime%20Crimes%20Against%20Children%20Children%20Welfare.pdf>

RCNI Submission to the Justice Reform Unit on the Proposal to establish an independent Policing Authority June 2014

3.0 This Submission – Structure:

This submission will follow the structure set out in the Justice Reform Unit information for ease of reference, and will be directed mostly at the first part of that structure, the functions and responsibilities of a Policing Authority.

4.0 Functions and Responsibilities of a Policing Authority

In general:

In our view, an independent Policing Authority should have the power to

- set policy and long-term goals for An Garda Síochána,
- appoint and supervise the most senior office holders (Garda Commissioner, Deputy Commissioner and Assistant Commissioners),
- ensure that all operational policies and procedures are published, unless there are compelling reasons for non-disclosure in particular cases (security related etc),
- set standards for performance across a range of areas, including the compassionate and professional treatment of victims,
- review those standards and monitor compliance with them,
- ensure that high quality training appropriate to their role is given to all members in the impacts of sexual violence (and other crimes of course) on its victims,
- consult with the general public and with victim support groups to help improve performance and also, awareness of the concerns of both victims and the community at large, and
- be answerable not to the Minister for Justice but to the Oireachtas as a whole.

We agree with the Irish Human Rights and Equality Commission (Designate)⁴ that in order to fulfill its functions, any independent Policing Authority should have control over a stable and sufficient budget, and further should have control over selection and appointment of its own staff.

In particular:

Any independent Policing Authority should oversee implementation of the EU Directive on Victims' Rights by An Garda Síochána, by ensuring that

(a) structures are in place to provide the information specified in their role as the "competent authority" to victims of sexual (and other) crime under both Article 4 (right to receive information from first contact with a competent authority) and Article 6 (right to

⁴ See IHREC (Designate) Submission to the Cabinet SubCommittee on justice on the Establishment of an Independent Policing Authority, May 2014, available online through this link:
http://www.ihrc.ie/download/pdf/ihrec_designate_submission_on_independent_policing_authority_may_2014.pdf

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receive information about their case), across all Divisions of An Garda Síochána and Garda HQ;

(b) systems exist to identify, pilot, and where appropriate generalize to all non-piloted areas, new and original ways of working (including inter-agency working) which give priority to victims' needs and to their rights to information and support from the Gardai as a "competent authority" under the Directive;

(c) systems exist to ensure that in both general and specialist roles, An Garda Síochána, including Garda HQ staff as necessary and appropriate, are given training to "increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner" (Article 25). In our submission,

(d) systems are in place to ensure that all Divisions (and Garda HQ staff as necessary and appropriate) are provided with enough training, information and other supports, to implement fully in their professional roles An Garda Síochána's responsibilities to victims of crime under the EU Directive, and under Articles 3 (right to understand and be understood), 4 (right to receive information about their rights, in effect), 5 (right to receive acknowledgement of their formal complaint), 6 (right to information about their own case), 7 (right to interpretation and translation), 8 (facilitation of referrals to specialist support agencies), 18 (victims' right to protection from secondary and repeat victimization, from intimidation and retaliation, including right to physical protection), 20 (right to protection of victims during investigative stage, including accompaniment), 22 (right to individual assessment to identify specific protection needs), 23 (right to protection of victims with specific protection needs in criminal proceedings) in particular;

(e) international best practice underpins timely and thorough ongoing evaluation of all these systems, in collaboration with the Garda Inspectorate;

(f) international best practice underpins data collection systems, without which it would be very difficult to implement (e) above. These systems should include qualitative and quantitative anonymised data from victims of crime, which is collected in a robust and reliable way.

(g) effective inter-agency structures are maintained, and new ones established and maintained as necessary and appropriate to enable more efficient support and provision of information to victims of crime.

2. Any independent Policing Authority should analyse and continue to monitor, the effectiveness of the Garda Ombudsman Commission from the perspective of victims of crime, and relay its findings to GSOC, making recommendations as appropriate. In particular, it should look at:

(a) whether victims of crime have confidence, generally speaking, in GSOC's ability and willingness to resolve complaints about An Garda Síochána's behaviour, from the most serious to the most minor, to the satisfaction of the complainant?

RCNI Submission to the Justice Reform Unit on the Proposal to establish an independent Policing Authority June 2014

(b) if not, would the complainants have more confidence in a more independent complaints structure, which did not ever involve informal resolution procedures or formal investigations by An Garda Síochána members? Our daily work tells us that many victims of sexual crime do not have confidence in the independence of the process, despite reassurances, and also, that they fear that making a formal complaint to GSOC, or to a local Superintendent, will have a negative effect on the investigation of their complaint of sexual crime. This fear often results in no complaint being made about the conduct of the member of An Garda Síochána, and therefore to the loss of the information about that conduct to management structures.

(c) the GSOC complaints procedure itself: is it easily accessible and understandable, is it constrained by rules which are not appropriate to the nature of many complaints, does it take too long, for example? And so on;

(d) the available remedies for GSOC complainants: are they adequate and/or appropriate?

3. Independent Policing Authority should adopt a whole-system approach to maintaining and where necessary, improving services provided to victims of crime by An Garda Síochána, and should ensure that systems are put in place at all levels to place victims of crime at the centre of An Garda Síochána activity. It should not be for IPA to devise and manage these systems on a day to day basis, but it should be their role to ensure that effective systems are in place and are maintained across An Garda Síochána.

5.0 Appointment and Membership of the Policing Authority

Our view is that membership of the Policing Authority should be varied, should be temporary, and should be open and transparent in its method of appointment. It should not include a preponderance of elected representatives, but should include people with relevant expertise, including representatives of relevant State agencies and victim representatives. There should be special provision for representation from minority groups, and the Authority should make every effort to be gender-balanced.

6.0 Its relationship with the Government and the Oireachtas

As indicated above, our view is that the Authority should be answerable directly to the Oireachtas, rather than to any specific Minister.

7.0 Implications for GSOC, the Garda Síochána Inspectorate and the Confidential Recipient

In our view, GSOC should retain its independence, including from any Policing Authority, but the Authority should be able to make recommendations and give advice to GSOC, and should be able to bring anything which in its view warrants investigation, to the attention of GSOC for further determination. If GSOC itself is not to be under the control of any Minister, it should be answerable to the Oireachtas in the same way as the Policing Authority.

RCNI Submission to the Justice Reform Unit on the Proposal to establish an independent Policing Authority June 2014

We feel that the Garda Siochana Inspectorate should make its reports to the Policing Authority rather than to any Minister, and the Authority should be able to refer issues of concern to Inspectorate where appropriate. Finally, we think it is important that **general** concerns raised with the Confidential Recipient should be received by the Authority, as this is a route through which **general** victim concerns can be identified and measures taken to address them effectively.

8.0 Conclusion

Finally, our view is that any Policing Authority should have as a **headline statement** not just to all members of An Garda Siochana, but also to all victims and their supporters, as well as the community at large, that victim concerns **are fundamental to their philosophy, strategy and objectives**. Without victims' willingness to come forward and without the willingness of Gardai to support them throughout the criminal justice process, attrition will not be reduced and ultimately, serious crimes will not be detected, prosecuted and punished appropriately.

Rape Crisis Network Ireland
4, Prospect Hill, Galway

10 June 2014

LPD/1

RCNI Submission to the Justice Reform Unit on the Proposal to establish an independent Policing Authority June 2014

Appendix II:

LISC composition: The Legal Issues Sub-Committee is a sub-committee of the National Steering Committee on Violence against Women, on whose behalf it conducts research and discussions and formulates agreed recommendations on domestic and sexual violence legal issues, wherever possible and appropriate. It works to an NSC agreed annual Work Plan based on the National Strategy to prevent Domestic, Sexual and Gender-Based Violence⁵, and in addition addresses legal issues whenever requested to do so by NSC. Like the NSC itself, it is a multi-agency body, whose volunteer membership meets quarterly and includes senior and junior representatives from the Law Library, a Law Society representative, a Legal Aid Board representative, domestic and sexual violence NGO representatives (in the case of sexual violence, this means both RCNI and Dublin Rape Crisis Centre), and representatives from An Garda Síochána, the Department of Justice, the Probation Service, and the Courts Service. All members are encouraged to contribute their views, and all recommendations put forward are agreed by LISC members. The variety of experiences, roles and perspectives within LISC has allowed it to make informed and thoughtful recommendations, well grounded in the daily reality of our justice system.

*Its remit is purely **advisory** and non-executive, as is that of the NSC itself.*

⁵ available online in both summary and full form at www.cosc.ie/publications



Tús nua do phóilíneacht Moltaí d'athchóiriú A New Beginning to Policing Proposals for Reform

Sinn Féin Submission, May 2014.



Sinn Féin believes that a major step change is now required in order to restore public confidence and bring about the radical reform citizens have a right to expect.

Introduction

Public confidence in our policing and justice system continues to be severely undermined and must be restored. A catalogue of recent controversies that have emerged through the courageous efforts of a number of whistleblowers relating to An Garda Síochána are both shocking and profound for the state, society and not least the Gardaí themselves.

The chronic failure and inaction of An Taoiseach Enda Kenny and the Fine Gael/Labour government to properly respond to these matters with the urgency required has been alarming. It served to compound the crisis.

What has been uncovered amounts to very deep-rooted and systemic deficiencies within senior levels of An Garda Síochána and other institutions of the state, including the Department of Justice and Equality. They failed to account for their actions. They failed to discharge their functions and responsibilities in the public interest. They failed to safeguard the integrity of these fundamental institutions of the state.

There is widespread public support for rank and file Gardaí. It has become increasingly clear that Garda senior management do not have the confidence of the public. The vast majority of Gardaí are good, public-minded, patriotic men and women who do their job well. But they have been failed by senior management and by government after government.

Citizens were promised real reform and a different way of doing things by this Fine Gael/Labour government. Yet citizens see before them an unchanged culture of cronyism from banking, to the charity sector, health, policing and the admin-

istration of justice.

There is a lack of regulation, transparency and accountability. Until now Labour and Fine Gael have resisted proposals to establish an independent Garda authority or increased powers for the Garda Ombudsman.

Sinn Féin welcomes the belated conversion of the government to these reforms. We believe that a major step change is now required in order to restore public confidence and bring about the radical reform citizens have a right to expect. We believe that a new beginning to policing similar to that of the Patten Report can deliver an open and transparent policing service, which is accountable for its actions to both a new independent policing authority and also to the communities which it serves.

These proposals set out by Sinn Féin relating to comprehensive Policing Reform will be presented to An Taoiseach Enda Kenny TD and the new Minister for Justice and Equality Frances Fitzgerald TD for consideration.

Padraig Mac Lochlainn

Padraig MacLochlainn TD
Spokesperson on Justice,
Equality and Defence

Gerry Adams

Gerry Adams TD
President, Sinn Féin



Sinn Féin Reform Agenda

Policing and justice are central issues in any society. Over the past decade there have been dramatic changes to the policing and justice landscape in the north as a consequence of the Patten Commission on Policing and the Good Friday Agreement and the transfer of powers to the Assembly in the north.

In the south the enactment of the Garda Síochána Act 2005 and 2007 saw the first substantial changes to how An Garda Síochána operated since the foundation of the state.

However, we believe that a major step change is now urgently required. The status quo is not an option. Sinn Féin wants to see a new dispensation in order to achieve more strengthened and sustainable reform, which can deliver a modern 21st century policing service now and in the future.

Key Principles

The key principles which must inform this project of change for An Garda Síochána include:

- Freedom from partisan political control or influence.
- Operational independence.
- Policing with the community to develop maximum confidence in the policing service and to maximise cooperation between citizens and An Garda Síochána.

Currently there exist five dimensions to policing delivery including:

1. An Garda Síochána and the Garda Reserve
2. Garda Síochána Ombudsman Commission (GSOC)
3. The Garda Inspectorate
4. The Garda Professional Standards Unit (GPSU)
5. Joint Policing Committees

Each has different functions and responsibilities defined within the Garda Síochána Act.

The GSOC independently investigate complaints against members of the Gardai or where it is deemed that an offence has occurred.

The Garda Síochána Inspectorate benchmark performance and promote best practice.

The Garda Professional Standards Unit examines and reviews, as directed by the Garda Commissioner, the operational, administrative and management performance of An Garda Síochána at all levels

The Joint Policing Committees act as a forum for local authorities, An Garda Síochána, Oireachtas members and the community to work together locally in tackling crime and promoting community safety.

What is clearly absent is an Independent Policing Authority, which holds the Garda Commissioner, to account and acts as a non-partisan body free from political control since the Commissioner at this point in time is directly accountable to the government through the Minister for Justice and Equality.

Sinn Féin would argue that the governance and accountability model of policing and justice structures are the core of

We believe that policing accountability should be premised on the law, courts, constitution and the proposed Charter of Rights for the Island of Ireland as expressly acknowledged in the Good Friday Agreement 1998.



what needs to change.

We believe that policing accountability should be premised on the law, courts, constitution and the proposed Charter of Rights for the Island of Ireland as expressly acknowledged in the Good Friday Agreement 1998.

We consider that An Garda Síochána in delivering its full functions should be accountable not only to an independent policing board but also to the democratically elected Houses of the Oireachtas through scrutiny committees and to local government and the communities it serves through the Joint Policing Committees.

Sinn Féin also propose that the Crime and Security Branch of An Garda Síochána and the Defence Forces Directorate (G2) come under the scrutiny of the Oireachtas Committee on Justice, Defence and Equality with the necessary safeguards in place, based on international best standards.

We also believe that An Garda Síochána must be accountable to a professional Code of Practice established by the Minister for Justice and Equality, applied by An Garda Síochána and benchmarked by a new Criminal Justice Inspectorate that will incorporate the existing Garda Inspectorate.

The Minister would be responsible for setting the overall long-term objectives for policing after consultation with the new policing authority. The Minister would be responsible for securing and allocating the budget to the policing board also.

The new Garda Authority would be responsible for the effective and efficient delivery of the police service and holds the Garda Commissioner to account directly.

A new Independent Garda Authority

The Garda Commissioner would have full operational independence for the police service but must account for their actions to the authority retrospectively if requested to do so. They therefore must standover any operational decisions taken and ensure that they are compliant within the law and human right norms.

The existing GSOC does not have the required powers to properly exercise their function and therefore their powers must be expanded.

The new Criminal Justice Inspectorate would replace the Garda Inspectorate and cover all state policing and justice related agencies and would be responsible for ensuring that standards, procedures, best international practice is applied across all in compliance within the law.

Sinn Féin proposals include:

(1). A New Independent Garda Authority

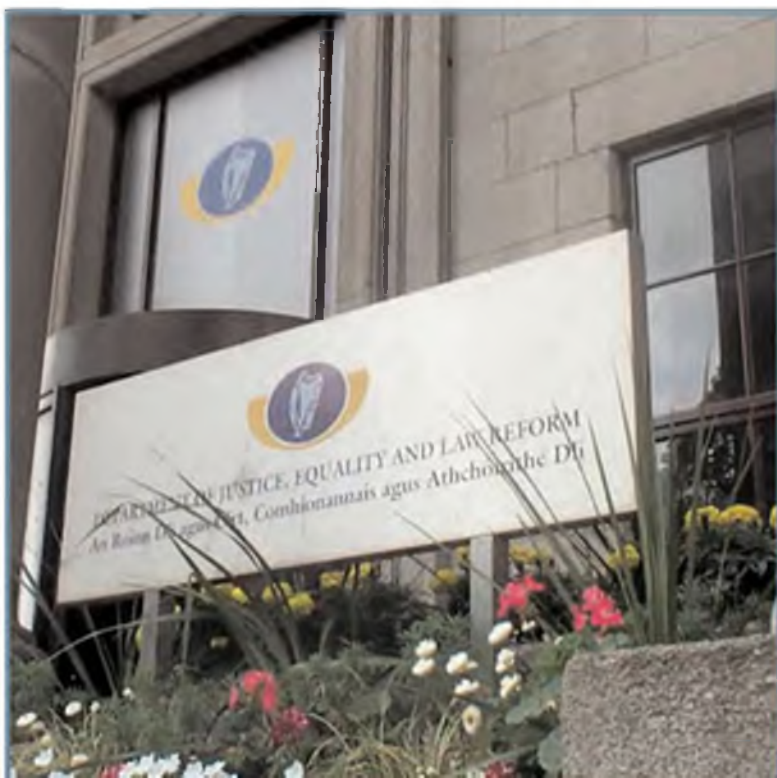
There are aspects of both the Scottish Police Authority and the Policing Board in the North, which could be incorporated into the design of the new Garda Authority.

Functions and Responsibilities

- The authority should have responsibility for determining the priorities of An Garda Síochána and should work in conjunction with the Garda Commissioner in the preparation of annual policing plans.
- Consult with local communities to obtain their views and experience of policing and JPCs.
- The Garda Authority should be responsible for ensuring the effective and efficient working of An Garda Síochána to include the setting of performance targets.
- The Authority should publish an annual report on the performance of An Garda Síochána
- The Authority should have oversight responsibility and budgetary control for an Garda Síochána.
- The Authority should hold the Garda Commissioner to account and the Commissioner should keep the Authority full briefed on relevant matters.
- Sinn Féin supports the recommendation from Transparency International Ireland that the appointments of the Garda Commissioner, the Deputy Commissioner and the Assistant Garda Commissioner should be made by the new Garda Authority following an open competition by the Public Appointments Service.
- The Authority should also have the power to remove these senior officers, (Garda Commissioner, the Deputy Commissioner and the Assistant Garda Commissioner).
- The Authority should deal with complaints against and the discipline of senior officers, (Garda Commissioner, the Deputy Commissioner and the Assistant Garda Commissioner).
- The Authority should have a clear relationship with GSOC which reinforces the independence of GSOC while allowing the Authority to bring issues to the attention of GSOC that might warrant investigation.
- The Authority should monitor and address human rights and equality compliance by An Garda Síochána at every level of its operations and ensure issues identified by the Garda Síochána Ombudsman Commission are dealt with.

Appointment and Membership of the Authority

- The Authority should have twenty members and should include members with a variety of backgrounds and expertise including legal, human rights, academic, civil society and law enforcement.
- The Authority should be diverse in its membership and political representation should be decided through the D'Hondt method. Independent members will also be recruited through open and fair competition.
- The Authority should be appointed by the Minister for Justice and Equality following an open competition managed by the Public Appointments Service.
- There should be a statutory obligation to ensure as far as is possible that the membership of the Authority is representative of society.
- The Authority should be supported in its work by a number of advisory groups, e.g. on Equality, Human Rights, and Youth Affairs etc.



Independent Oversight

(2). Independent Oversight

Garda Síochána Ombudsman Commission
The Garda Síochána Ombudsman Commission was brought established by the Garda Síochána Act 2005 and has been operational since 2007.

The statutory functions of the Ombudsman Commission are

1. to receive complaints made by members of the public concerning the conduct of members of the Garda Síochána,
2. to carry out the duties and exercise the powers assigned to it in relation to those complaints,
3. to issue guidelines for the informal resolution of certain categories of complaints and to make procedural rules for investigations
4. to report the results of its investigations to the Garda Commissioner and, in appropriate cases, to the Director of Public Prosecutions and, if it reports to the Director, to send him or her a copy of each investigation file,
5. to conduct other investigations of matters concerning the conduct of members of the Garda Síochána,
6. to examine practices, policies and procedures of the Garda Síochána
7. to draw up with the Garda Commissioner protocols

There is an opportunity and a requirement for real reform of the Commission. The concept of Gardai investigating complaints on behalf of GSOC has raised issues in respect of the Commission's independence and effectiveness. Indeed in 2008, 2009 and 2010 45% of all complaints to GSOC were investigated by An Garda Síochána. Furthermore the fact that the Garda Commissioner is not within the remit of GSOC is an unreasonable limitation in its role.

The Garda Síochána Ombudsman Commission has faced serious blockages in its investigations. At times senior Gardai have questioned the relevance of the documents that it has sought to attain. There is a real need for additional powers to be given to it.

We need to have full accountability for the Garda Síochána. The Garda Síochána Ombudsman Commission needs to have

We need to have full accountability for the Garda Síochána. The Garda Síochána Ombudsman Commission needs to have full powers and full independence.



full powers and full independence. That would be in the best interests of the men and women who serve us in the Garda Síochána and all of our citizens.

Sinn Féin are broadly supportive of the recommendations for change put forward by GSOC and by the former Police Ombudsman in the North of Ireland, Nuala O'Loan in their submissions to the Oireachtas Justice committee.

Proposals to improve the effectiveness of the Garda Síochána Ombudsman Commission (GSOC):

- Serving officers of An Garda Síochána should not be seconded to GSOC, i.e. Gardai should not be investigating fellow Gardai.
- A duty of impartiality and independence to be included in GSOCs objectives.
- GSOC to have a statutory obligation to report at regular intervals to the Oireachtas Committees on Justice and Public Service Oversight and answer questions from elected members.
- GSOC should have powers of investigation in respect of the work of the Garda Commissioner.
- Where a Garda retires or resigns, any complaint against the officer can still be investigated if GSOC believes it would be in the public interest to do so.
- The time limit for the making of complaints to GSOC should be extended from six months to one year with the time period running from the date of knowledge, i.e. the date upon which the complainant knew or ought reasonably to have known about the conduct the subject of the complaint. There should be some level of discretion in situations where a complainant would be unfairly prejudiced as a result of the time limits.
- The Minister for Justice should not have the power to withhold material from GSOC on national security grounds. GSOC should be in turn under a statutory obligation to make proper provision for protecting such material.
- Similarly the Garda Commissioner should be under a duty to provide GSOC with material it requests.
- GSOC should be given an unqualified right to enter and search police stations.
- The adherence to agreed Protocols between Gardai and GSOC should be made compulsory in legislation including the granting of direct access to PULSE for GSOC.
- Allow the term of the Ombudsman to be reduced from 6 years to a 5 year term with the option of a second term.
- Give the Ombudsman remit over civilian staff of the Gardai.
- Extend the list of those who can refer complaints to the Ombudsman to include the newly proposed Criminal Justice Inspectorate and the Chief Justice Director of Public Prosecutions.
- Allow police officers to complain to the Ombudsman about the conduct of fellow Officers.



- Allow the Ombudsman to conduct mediation.
- Allow the Ombudsman to compel witnesses, including Garda officers.
- Allow the Ombudsman to compel retired Gardai to attend interview and to provide any documentation in their possession.
- Place a duty on all Gardai to report any evidence of suspected criminal offence by other Gardai or civilian staff.
- Give the Ombudsman the power to arrest persons who are not Gardai but who are engaged in crime for which a Garda is being investigated.
- Give the power to the Ombudsman to recommend the suspension of a Garda.
- Give the Ombudsman the power to direct informal disciplinary proceedings against a Garda where it is inappropriate to recommend formal disciplinary proceedings.
- Give power to entitle the Ombudsman to attend all disciplinary hearings which follow a police ombudsman investigation.

Complaints Procedures for Gardaí

(3). Confidential Recipient/Complaints Procedure for Gardaí

- GSOC should have the power to take complaints directly from Gardaí or civilian staff supporting An Garda Síochána.
- The resolution of what has been termed service issues or more minor problems should be dealt with by a disputes resolution or mediation mechanism under the auspices of GSOC to ensure the speedy and effective resolution of relatively minor matters.
- The Confidential Recipient should be directly accountable to the Independent Garda Authority.

(4). State security and accountability

Sinn Féin propose that the Crime and Security Branch of An Garda Síochána and the Defence Forces Directorate (G2) come under the scrutiny of the Oireachtas Committee on Justice, Defence and Equality with the necessary safeguards in place, based on international best practice.

(5). Garda Inspectorate - A New Criminal Justice Inspectorate

Sinn Féin notes that as currently constituted there is the potential for some overlap in the roles of the Garda Inspectorate and GSOC. While some of the recent submissions to the Oireachtas Committee on Justice, Equality and Defence have recommended the abolition of the Inspectorate and the effective merging of its roles into GSOC, Sinn Féin believes a different approach would be more effective.

Sinn Féin advocates the broadening of the role of the Inspectorate to that of a new Criminal Justice Inspectorate. In a similar fashion to the way in which the Health Information and Quality Authority (HIQA) conducts inspections of various institutions within the health sector we believe the Criminal Justice Inspectorate should have a similar role within the Justice sector.

The Criminal Justice Inspectorate would be primarily responsible for the effectiveness and efficiency of the workings of organisations within the criminal justice sector. This would include both the inspection and reporting of their examination of policies, operational practices and procedures across the sector organisations specified in any new legislation and work to ensure public confidence is maintained. They must also have responsibility for laying their reports before the Houses of the Oireachtas.

Bodies under the remit of the proposed

Criminal Justice Inspectorate

An Garda Síochána

Garda Síochána Ombudsman Commission

The Director of Public Prosecutions

The Probation Service

The Courts Service

Irish Youth Justice Service

Sinn Féin propose that the Crime and Security Branch of An Garda Síochána and the Defence Forces Directorate (G2) come under the scrutiny of the Oireachtas Committee on Justice, Defence and Equality



North/South Co-operation

Sinn Féin is seeking the development of an All-Ireland democratically accountable policing and justice service operating to the highest standards of human rights and justice.

At present the delivery of policing and justice is undermined by partition. This requires immediate steps to promote greater co-operation, joint working and the promotion of best practice across the island.

Criminality and illegality does not recognise borders. In some cases jurisdictional disjoints provides legal grey areas and gaps in service and safeguards.

We have had occasions in which registered sex offenders can cross the border without authorities being alerted and occasions when vetting checks did not highlight concerns raised in the other jurisdiction.

The lack of reciprocal arrangements on penalty points undermines road safety. The clear need to safeguard missing persons, tackle fraud, money laundering and smuggling are clear examples of issues that can be better tackled through formal, structured and accountable co-operation.

There have are examples where the Gardaí are not co-operating with the Police Ombudsman in the north in relation to historical investigations including the Dublin/Monaghan bombings in which the 40th anniversary occurs this month and also the Widow Scallons pub atrocity in Dublin in 1994 which were both carried out by the loyalist UVF. An Gardaí Síochána failed to cooperate with the Police Ombudsman in the North in its investigation into the killing of Sinn Féin Councillor Eddie Fullerton in 1991 in Buncrana, Co. Donegal by the loyalist UFF, amongst other cases. In these cases, one justice system is undermining the accountability of the other.

borders. In some cases jurisdictional disjoints provides legal grey areas and gaps in service and safeguards

Ireland, north and south, faces similar problems in tackling criminality, and ensuring community safety. Both jurisdictions face challenges and can learn from each other to build accountable and representative policing and justice systems operating to the highest international standards.

This includes the examination of the powers of the offices of the policing ombudsman, policing and justice oversight bodies and policing authorities to ensure equivalence of powers and harmonisation of approaches to the highest international standards.

Both jurisdictions have an obligation to develop the optimum human and civil rights framework within which policing and justice must operate.

Cross border co-operation makes sense for border communities, where common working and protocols can tackle criminal behaviour and promote community safety.

The benefits to working in an All-Ireland context within the policing and justice systems can deliver the optimal use of resources, the increase in skills and professional expertise. There already exists the protocol for lateral entry for Gardaí into the PSNI and vice versa, but more can and should be done to deliver greater co-operation for the mutual benefit of all citizens on the island. Current barriers to lateral entry should be removed.

Sinn Féin does not underestimate the challenges to creating a Cross Border and All-Ireland approach to policing and justice, not only in terms of organisational change, but also in resolving jurisdictional and legal issues. However it is work that must be undertaken.



All-Ireland Policing and Justice and the Good Friday Agreement

The Good Friday Agreement was supported by the political parties and the two governments who are joint guarantors. The Good Friday Agreement was endorsed by the majority of citizens both north and south. It promised a new beginning to policing and criminal justice. Significant progress has been made on reshaping and building accountable policing and changes to the criminal justice system over the past decade.

The Agreement provided for the establishment of a North South Ministerial Council NSMC;

to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, co-operation and action within the island of Ireland - including through implementation on an all-island and cross-border basis - on matters of mutual interest within the competence of the Administrations, North and South.

At the time of Good Friday Agreement, policing and justice powers was not a devolved matter and so outside the competence of the Assembly/Executive in the north.

These powers have now been transferred and are therefore now under the competence of the Assembly/Executive in the north.

Following on from the transfer of these powers it is clear that policing and justice should be an area of co-operation under the NSMC as it is a clear issue of mutual benefit.

In addition, the Good Friday Agreement and ancillary agreements provided for a Bill of Rights for the North and an All-Ireland Charter of Rights, as well as equivalent Human Rights Commissions and Equality Mechanisms north and south. These commitments have yet to be implemented in full.

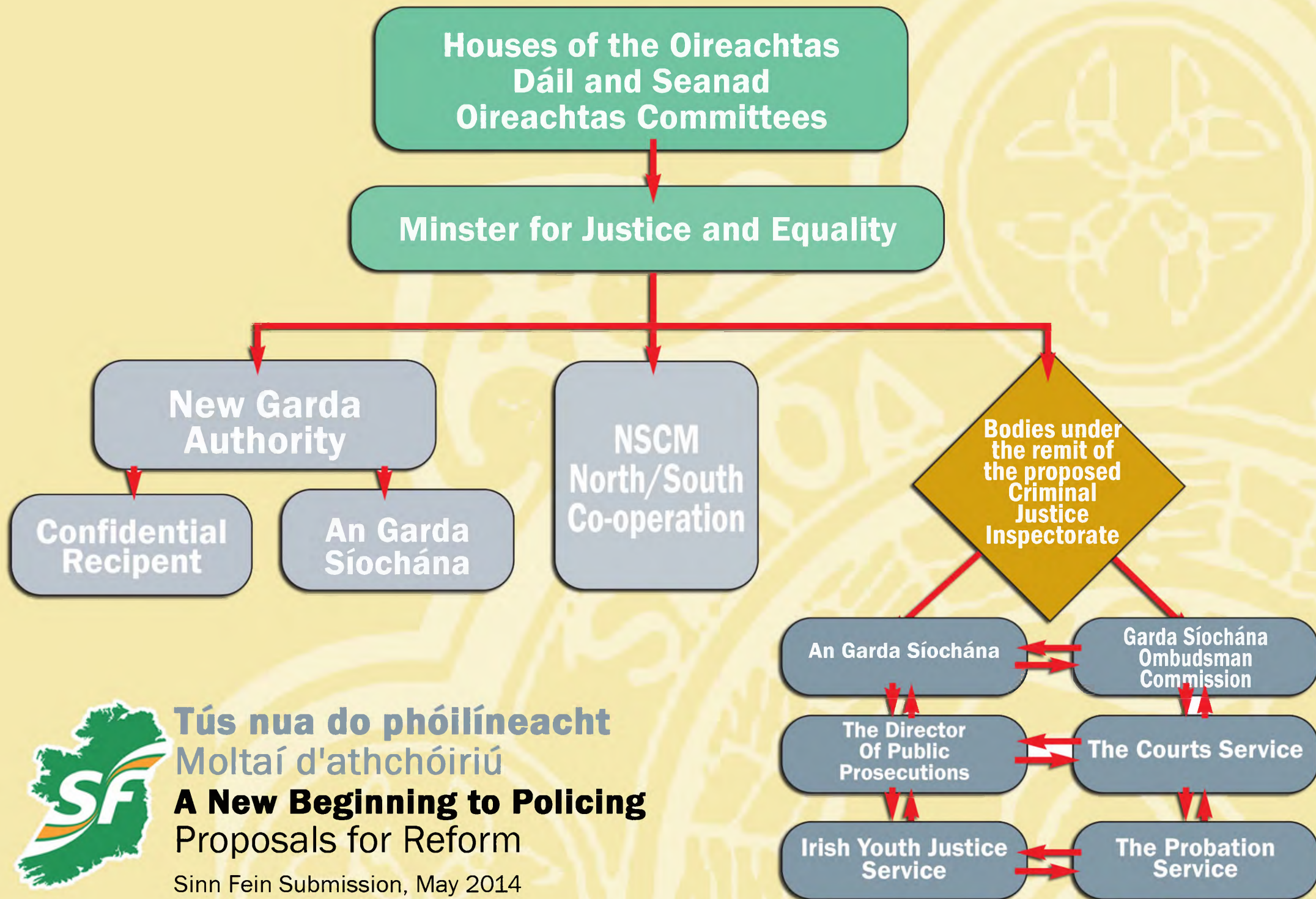
These rights frameworks are fundamental to achieve accountable policing and justice and should be expedited as a matter of urgency.

Sinn Féin is calling for:

- Policing and Justice to be an area of co-operation under the NSMC.
- Consideration be given to identifying and delivering aspects of the policing and justice system through a dedicated All-Ireland body which may include an All-Ireland sex offenders register and vetting system, All-Ireland penalty points system and road safety promotion, All-Ireland training and personnel exchanges across policing and justice bodies, community safety, missing person and fraud.
- The implementation and enactment of a Bill for Rights and All-Ireland Charter of Fundamental Rights.
- The networking of policing Authorities North and South to promote the exchange of best practice, identification of areas of co-operation for mutual benefit and harmonisation of approaches.
- Full co-operation between criminal justice and policing oversight bodies across Ireland including between police services and police oversight bodies including the offices of the Police Ombudsman.
- The development of equivalence of powers and approaches between the offices of the Policing Ombudsman and oversight bodies, north and south and to the highest standards of oversight and investigation.
- Holding joint meetings of Joint Policing Committees and Policing and Community Safety Partnerships along the border corridor (i.e. Donegal and Fermanagh or Louth and Armagh) at least twice annually.

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Tús nua do phóilíneacht
Moltaí d'athchóiriú
A New Beginning to Policing
Proposals for Reform

Sinn Féin Submission, May 2014

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About Sinn Féin

Sinn Féin is a 32-county political party whose objective is to end partition on the island of Ireland and establish a democratic and socialist republic that reflects the core principles of unity, equality and prosperity.

**Response of the
Victims' Rights Alliance (VRA)
to the Public Consultation on Establishing
an Independent Policing Authority¹**

¹ These submissions are only made on behalf of the following members of the VRA, namely: Advocates for Victims of Homicide [AdVIC], the Dublin Rape Crisis Centre [DRCC], the Irish Road Victims' Association [IRVA], the Irish Tourist Assistance Service [ITAS], One in Four, PARC Road Safety Group and Support after Homicide [SAH].

ABOUT THE VICTIMS RIGHTS ALLIANCE:

The Victims' Rights Alliance (VRA) is an Alliance of victim support and human rights organisations in Ireland namely, Advocates for Victims of Homicide [AdVIC], the Dublin Rape Crisis Centre [DRCC], Inclusion Ireland, the Irish Council for Civil Liberties [ICCL], the Irish Road Victims' Association [IRVA], the Irish Tourist Assistance Service [ITAS], One in Four, PARC Road Safety Group, the Rape Crisis Network Ireland [RCNI], Safe Ireland and Support after Homicide [SAH].

The Alliance was formed with one key goal: to ensure the Victims' Rights Directive is implemented in Ireland within the proposed time frame, with all victims of crime in mind.

Given the short time frame some of the VRA members have not been in a position to review or approve these submissions. These submissions therefore are only made on behalf of the following members of the VRA, namely:

Advocates for Victims of Homicide [AdVIC], the Dublin Rape Crisis Centre [DRCC], the Irish Road Victims' Association [IRVA], the Irish Tourist Assistance Service [ITAS], One in Four, PARC Road Safety Group and Support after Homicide [SAH].

For further information on the VRA please see www.victimsrightsalliance.com

“... it is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”²+

I. Introduction

The Victims' Rights Directive must be transposed in Ireland by the 16th of November 2015³. The Directive requires that minimum information, support and protection should be afforded to all victims of crime.

Article 4 (1) (h) of the Victims' Rights Directive that information should be offered to victims on *'the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings.'* The competent authority in this context refers to the Gardaí.

The implementation of a transparent, clear and easy complaints procedure would enable victims to make a complaint about a breach of their rights under the Directive. If such a procedure is not in place then victims will have to go to the courts to enforce their rights.

In the context of implementing an independent policing authority it is imperative that the 'victim' is considered at the heart of any complaints process.

II. Placing the voice of the victim at the heart of an Independent Policing Authority?

The recent publication of the Guerin Report⁴ illustrates serious breaches of trust and a complete failure of the complaints procedures which was in place to deal with complaints made by victims of crime. It is important to note that the Guerin Report highlights the consequences which ineffective complaints procedures can have on the life, liberty and protection of the victim.

Surveys were conducted last year by AdVIC, SAH and DRCC on victims of homicide and rape⁵. The results of the survey illustrate that some victims face difficulties in obtaining information, support and protection from the Gardaí. Furthermore, the comments of victims

² *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259.

³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

< <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:FULL:EN:PDF> [Hereafter Victims' Rights Directive]

⁴ Report to An Taoiseach [Prime Minister] Enda Kenny TD on a Review of the Action Taken By an Garda Síochána [Police] Pertaining to Certain Allegations made by Sergeant Maurice McCabe, 6th May 2014

⁵ Survey by AdVIC, the DRCC and SAH of victims of crime; comment made by victim in response to the survey. For further information on the survey please contact marianidhomhnaill@gmail.com

highlight that they are often unwilling or too afraid to make a complaint to the Gardaí in relation to a breach of their rights.

Victims were asked a number of questions during the course of the survey including whether they felt intimidated or re-victimised by the accused and/or the criminal justice system.

Of those who answered the question, 49% of victims stated that they felt intimidated/re-victimised by the accused, while 72% stated that they felt re-victimised by the criminal justice system.

A number of victims complained that they felt re-victimised by the Gardaí:

'The Garda made me feel like a criminal and that our feelings weren't taken into account. There was more respect given to the accused family'.

'Found dealing with Gardaí very traumatic and worse than the original experience of rape. Felt re-traumatised.'

'[Felt re-victimised by] the guards coming to my home informed me that they still had my sons leg after he was buried the day previous. '

These comments are shocking and illustrate why victims often feel unwilling or unable to make a complaint about the Gardaí.

Victims who were surveyed by AdVIC, the DRCC and SAH were also asked why they did not make a complaint about their case. They said that:

- ***'I was afraid'***
- ***'Didn't want to bother them'***
- ***'I didn't make a complaint as I was afraid and confused'***
- ***'Didn't think there was any point'***
- ***'We were afraid that it would damage our case'.***

The author has included the foregoing survey and quotes to illustrate that victims are often afraid to make a complaint to the Gardaí about their case. This fear can be unfounded in some instances but not in others. The Gardaí hold all of the power and the victim, who has already been subject to a crime, is often forgotten or re-victimised. Justice must not only be done but it must also appear to be done. This issue is ever more pressing given the outcome of the Guerin Report and the forthcoming implementation of the Victim's Rights Directive in Ireland.

III. What should an Independent Policing Authority look like?

a. Appointment and membership

An Independent policing authority must be independent. It is imperative that membership would exclude members of the Gardaí. Appointment should be via an open and transparent competition. Membership should include people from diverse elements of society including the public and private sector. Non – Governmental organisations should also feature in its membership. Any board member should be familiar with the Gardaí's role under the Victim's Rights Directive and any subsequent legislation which is implemented to give effect to this.

b. Functions and responsibilities

The independence of the policing authority should be established via legislation. Legislation should also permit the policing authority to investigate the Gardaí and enable it to gain access to any files relevant for the purpose of the investigation.

Some victims of crime are afraid to approach the Gardaí with a complaint during the investigation in fear of an impact on their case. This new body therefore could be a liaison mechanism between the victims of crime and the Gardaí involved in their case

The conclusion arrived at by the policing body when dealing with victims of crime complaints needs to be respected and acted on by the Gardaí.

c. Implications for the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate – Lessons to be learned from GSOC

The Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate are currently not fit for purpose from the victim's perspective. They would not be in a position to deal with complaints of victims as a result of any breaches under the Victims' Rights Directive. These submissions are not advocating the abolition of GSOC but are rather highlighting issues with the current complaints system which is in place. This is important to prevent similar issues arising in an Independent Policing Authority. Furthermore, such an analysis highlights any necessary functions and responsibilities which an Independent Policing Authority requires.

The majority of complaints to the GSOC are from perpetrator of crime and very few from victims of crime. The new policing body therefore need to be "*victim friendly*".

The author is aware that some victims believe that GSOC is not independent. They see a direct link between the Gardaí and GSOC. This is exacerbated by the fact that a substantial amount of complaints which GSOC receive are from an accused person/perpetrator and not the victim. This view has been fuelled by the manner by which victims complaints have been handled in the past and the lack of engagement with victims. This may have been due to the fact that GSOC did not have the authority to deal with said complaints or lack of information. However, perception is important for a victim to have faith or trust in a complaints process. Victims are unlikely to engage with the system which they perceive to be biased. Once again the author notes that justice must also appear to be done.

The procedure to make a complaint to GSOC is too rigid. Victims of crime are not in the right frame of mind to get involved with the process and the system needs to be simplified.

The time period for the making of a complaint to GSOC is unreasonable. Very often victims are unaware that there is a time period by which they must make a complaint. A time period of six months is inappropriate and it does not take account of the vulnerable nature in which some of the victims find themselves in⁶. It is submitted that a longer period should apply. In this regard, the author has had regard to the Victim's Rights Directive, which makes no reference to a time limit on the making of complaints relating to a breach of a victim's right under the Directive. Failure to deal with a complaint outside of the six month time frame may be in breach of States obligations under the Directive. At a minimum a complaint under the Directive should be able to be made for the course of criminal proceedings and for a short period thereafter⁷. When dealing with serious crime, there should be no time constraint to make a complaint.

A member of the VRA is aware of a case where a victim, after complaining almost three years earlier to GSOC, was finally sent a letter stating that GSOC could not adjudicate on their case. The author is also aware of a complaint that was made to GSOC in 2007⁸. It took until 2011 for GSOC to make this complaint admissible. A report was published by GSOC in early 2014 which found the Garda investigation, which was the subject of the original 2007 complaint, was '*inadequate and poorly conducted*'. The delay in the process was arguably contributed to by the Gardaí's refusal to provide requested documentation to GSOC. A delay of almost eight years is completely unacceptable and is arguably in breach of a person's right to access to justice within a reasonable period of time, as provided for by the ECHR. Furthermore, any independent policing authority must be able to gain access to Garda files in a case. It is accepted that confidentiality of these files is also imperative.

Any independent policing authority will only be able to carry out their functions in an effective manner if they can gain access to all relevant information. Moreover, the independence and competency of an independent policing authority rests on its ability to show that justice is being achieved and that the Gardaí are assisting in this process. Legislation therefore must be implemented to ensure that the Gardaí must provide the independent policing authority with information which the policing authority believes is relevant to their investigation. Whether information should be provided or not should not rest on whether the Gardaí believe it is relevant⁹. The legislation must also provide that the

⁶ Article 22 of the Directive provides for the individual assessment of all victims of crime in order to identify those victims that may have specific protection requirements. In considering whether a victim needs extra protection measures regard will be had under Article 22 (4) to the characteristics of the victim, the nature of the crime and circumstances of the crime. It is assumed under Article 24 that child victims need extra protection.

⁷ The Victim's Rights Directive

⁸ Michael Brennan; 'GSOC slams Garda investigation into death of Donegal taxi driver' (Sunday Business Post, 1st June 2014)

⁹ The author is aware that the Gardaí have refused to provide information to GSOC, which GSOC deemed relevant. This refusal was on the basis that the Gardaí believed that the information was not relevant.

information obtained must be held in a secure manner and it must be subject to confidentiality.

These delays in dealing with complaints can cause additional distress to the victim and it can often make them feel re-victimised. An Independent Policing Authority must be able to deal with complaints in a quick and effective manner.

GSOC is not in a position in its current format to deal with complaints which would arise as a result of a breach under the Victims' Rights Directive.

IV. Recommendations

- An Independent Policing Authority must be independent and free from any influence direct or indirect from the Gardaí.
- An Independent Policing Authority must provide a transparent, clear and easy complaints procedure which would enable victims to make a complaint about a breach of their rights, including a breach of their rights under the Victims' Rights Directive.
- A 'victim' and their needs must be considered when developing any complaints process and procedures.
- When dealing with serious crime, there should be no time constraint to make a complaint.
- A time period of six months for the making of a complaint is too short and this should be extended for a period extended beyond the end of any criminal justice proceedings in line with obligations to provide information, support and protection under the Victim's Rights Directive.
- The manner by which a victim can make a complaint should be easy and straight forward.
- Complaints should be responded to in a timely and effective manner.
- The Independent Policing Authority should have jurisdiction to deal with any breaches of a victims rights under the Victim's Rights Directive.
- An Independent Policing Authority could be a liaison mechanism between the victims of crime and the Gardaí involved in their case.

- Legislation must be implemented to ensure that an Independent Policing Authority can gain access to documentation which they deem relevant to carry out an effective investigation. This documentation must be kept secure and confidential.
- The conclusion arrived at by an Independent Policing Authority when dealing with complaints needs to be respected and acted on by the Gardaí.