



BILLE AN GHARDA SÍOCHÁNA 2004
GARDA SÍOCHÁNA BILL 2004

EXPLANATORY AND FINANCIAL MEMORANDUM

Background to and objective of the Bill

This Bill has two main objectives. One is to reform the law relating to the administration and management of the Garda Síochána, including in particular the respective roles of the Garda Commissioner and the Minister for Justice, Equality and Law Reform. This part of the Bill follows from a 2002 report on Performance and Accountability in the Garda Síochána, a report developed under the Strategic Management Initiative and which recommended significant reform.

The other main objective of the Bill is to provide for the establishment of an independent body to be known as the Garda Síochána Ombudsman Commission. The agreed Programme for Government contains a commitment to establish an independent Garda Inspectorate, which will have the power to investigate complaints, and will have the powers of an Ombudsman. The Complaints Board has itself acknowledged that there are problems with the present arrangements regarding Garda accountability in this area and that they must be addressed. The Government has therefore decided that a new mechanism is needed to ensure openness and transparency in dealing with complaints against members of the Garda Síochána.

The primary function of the Garda Síochána Ombudsman Commission will be to investigate complaints by members of the public against members of the Garda Síochána and in that respect it will replace the existing Garda Síochána Complaints Board, which was established under the Garda Síochána Complaints Act 1986. The Commission will have comprehensive powers of investigation to deal with complaints and it will have ultimate control and oversight of all complaints processed in accordance with the provisions of the Bill. It will also have the power to investigate of its own motion, i.e. without a complaint having to be made, any case involving the Garda Síochána where death or serious harm to a person has occurred where it is desirable in the public interest or, any matter that appears to it to indicate that a member of the Garda Síochána may have committed an offence, or behaved in a manner that would justify disciplinary proceedings. The Commission will also be charged with examining practices, policies and procedures within the Garda Síochána which may give rise to complaints.

Part 1 — Preliminary Matters

Short Title

Section 1 provides that the short title of the Bill is the Garda Síochána Bill 2004.

Commencement

Section 2 provides that the Bill, when enacted, will come into operation by Ministerial order, and different provisions of the Bill may be brought into operation at different times.

Interpretation

Section 3 defines certain words and terms used in the Bill.

Repeals

Section 4 provides for the repeal of legislation, both primary and secondary, listed in Schedule 1.

Expenses

Section 5 is a standard provision on the payment of expenses incurred in the administration of the Bill out of moneys provided by the Oireachtas.

Part 2 — Garda Síochána

Chapter 1

General

Section 6 continues the Garda Síochána in being as a police service. This is necessary because the existing statutory basis for the Force (section 5 of the Police Forces Amalgamation Act 1925) is being repealed by this Bill.

Section 7 sets out the functions of the Garda Síochána, the first time this has been done in legislation. The Performance and Accountability report, mentioned in the Introduction, recommended that legislation should establish the legal responsibility of the Garda Síochána in providing a police service in the State, and an earlier (1997) Strategic Management Initiative report on the Garda Síochána recommended that the key functions of the Garda Síochána should be defined by statute. The section sets out the objectives of these functions, such as preserving peace and public order, and protecting the security of the State and its institutions. It also provides that the Garda Síochána shall provide any other service, including immigration services, for which they are given responsibility by law. A significant feature of this section is that the Garda Síochána will now be statutorily obliged to have regard to the importance of upholding human rights in the performance of their functions.

Section 8 is new, and provides a statutory basis for the prosecution of offences by members of the Garda Síochána in the name of the Director of Public Prosecutions. It is the practice for members of the Garda Síochána to take prosecutions in the name of the DPP and this provision will enable the DPP to regulate how this is done, by giving general or specific directions, or by taking over any prosecution initiated by a member of the Garda Síochána and either proceeding with it or terminating it. The section also makes clear that all official prosecutions by members of the Garda Síochána will be taken under this section and not under the common law procedure

of prosecution by common informer — a procedure which is, in any event, no longer followed by the Garda Síochána in practice.

Chapter 2

Personnel and Organisation

Section 9 provides for the appointment, by the Government, of a person to be the Commissioner of the Garda Síochána.

Section 10 provides for the appointment, by the Government, of persons to the ranks of Deputy Garda Commissioner and Assistant Garda Commissioner in the Garda Síochána.

Section 11 provides for the removal from office, by the Government, of the Garda Commissioner or a Deputy Garda Commissioner. The section makes clear that any such removal will have to be for stated reasons.

Section 12 prescribes the steps to be taken by the Government before considering the removal from office of the Garda Commissioner or a Deputy Garda Commissioner so as to ensure that the principles of fair procedures and natural justice apply. These steps include notifying the person involved of the reasons for considering removal and giving the person an opportunity to respond. Where the Government removes such a person from office, the Minister must lay a statement of the reasons for the removal before each House of the Oireachtas.

Section 13 provides for the appointment by the Government of persons to the ranks of Chief Superintendent and Superintendent and the appointment by the Garda Commissioner of persons to the ranks of garda, sergeant and inspector.

Section 14 establishes a basis in law for the resources of the Garda Síochána to be supplemented by providing for the appointment, by the Garda Commissioner, of persons as volunteer members of the Garda Síochána who will have the same powers, duties, immunities and privileges as a member appointed to the rank of garda under *section 13*. No persons may be appointed as volunteer members for a period of 12 months following the commencement of the section and until the necessary regulations on matters such as training have been made.

Section 15 provides for a revised form of attestation for persons joining the Garda Síochána and requires members of the Force to, inter alia, declare that they will uphold the Constitution and the laws and not belong to or subscribe to any political party or secret society. For the first time there will be a specific reference to the need for members of the Garda Síochána to have regard for human rights in carrying out their duties.

Section 16 provides for the establishment by the Minister for Justice, Equality and Law Reform of a code of ethics for the Garda Síochána which will be incorporated within the disciplinary framework for the Garda Síochána. The purpose of the code is to lay down standards of conduct and practice for members of the Garda Síochána and to make them aware of their obligations under the European Convention on Human Rights.

Section 17 provides for the establishment of representative associations for ranks of the Garda Síochána below the rank of Assistant

Garda Commissioner. This section prohibits membership of a trade union by a member of the Garda Síochána.

Section 18 provides for the appointment, by the Garda Commissioner, of civilian staff of the Garda Síochána subject to the sanction of the Ministers for Justice, Equality and Law Reform and Finance. Such civilian staff of the Garda Síochána will be civil servants of the Government.

Chapter 3

Roles of Minister and Garda Commissioner

Section 19 provides for the setting of priorities for the Garda Síochána by the Minister for Justice, Equality and Law Reform. This provision implements a recommendation contained in the Performance and Accountability report mentioned in the Introduction.

Section 20 provides for the formulation of a strategy statement for the Garda Síochána by the Garda Commissioner and also implements a recommendation contained in the Performance and Accountability report.

Section 21 provides for the preparation by the Garda Commissioner of an annual policing plan for the Garda Síochána, again implementing a recommendation of the Performance and Accountability report.

Section 22 provides that the Minister for Justice, Equality and Law Reform may issue directives to the Garda Commissioner, in writing, in relation to any policing matter. The Minister must get prior approval of the Government for any directive, and any directive issued must be laid before both Houses of the Oireachtas except where to do so might prejudice the security of the state or a criminal prosecution. In such cases a statement of the fact that a directive issued must be laid before both Houses.

Section 23 sets out the functions of the Garda Commissioner, which include the direction and control of the Garda Síochána, advising the Minister for Justice, Equality and Law Reform on policing and security matters and being accountable to the Minister in relation to the performance of the Commissioner's functions and those of the Garda Síochána.

Section 24 allows the Garda Commissioner, with the consent of the Government, to enter into an agreement with a police service or other law enforcement agency outside the State relating to co-operation or exchange of information.

Section 25 allows the Garda Commissioner to enter into contracts, operate bank accounts and sue or be sued in the name of his or her office.

Section 26 provides a statutory basis for the provision of police services by the Garda Commissioner in circumstances where it is consistent with the functions of the Garda Síochána to provide such services and the Commissioner is satisfied that the recipient of the services has paid or will pay for the services.

Section 27 allows the Garda Commissioner, subject to regulations, to delegate his or her functions under this Bill.

Section 28 provides for the exercise of the functions of the Garda Commissioner in the Commissioner's absence.

Section 29 provides that the Garda Commissioner shall have direct responsibility for the distribution and stationing of members of the Garda Síochána throughout the State. The section also retains the requirement that members stationed in Gaeltacht areas should, to the extent practicable, be sufficiently competent in the Irish language.

Chapter 4

Co-operation with local authorities and arrangements for obtaining the views of the public

Section 30 defines certain words and terms used in *Chapter 4* of the Bill.

Section 31 provides that the Minister for Justice, Equality and Law Reform may issue guidelines for the establishment and maintenance by a local authority and the Garda Síochána of a joint policing committee. These guidelines may relate to the composition of such committees, which may include elected representatives, such as members of Dáil Éireann.

Section 32 provides for enhanced co-operation between the Garda Síochána and local authorities through the establishment of joint policing committees and sets out the functions of such committees. The section provides that the role of the joint policing committees is to act as a forum where matters relating to all local aspects of policing can be discussed and where strategies and recommendations for dealing with issues arising locally can be formulated. The committees can only make recommendations and the Garda Síochána will not be formally accountable to them. The establishment of local policing fora under the umbrella of joint policing committees to deal with particular initiatives in any given area is also provided for in this section.

Section 33 places a duty on local authorities, in performing their functions, to have regard to the need to take such steps as may be practicable to assist in the reduction of crime, disorder and anti-social behaviour within its area of responsibility.

Section 34 requires the Garda Commissioner to make arrangements for obtaining the views of the public on policing and crime.

Chapter 5

Accountability

Section 35 provides that the Garda Commissioner shall be the accounting officer for the appropriation accounts of the Garda Síochána for the purposes of the Exchequer and Audit Department Acts 1866 and 1921 and shall appear before the Committee of Public Accounts in that regard.

Section 36 provides for the establishment of an Audit Committee by the Garda Commissioner which is in line with best practice and is required for State Bodies by the Department of Finance "Code of Practice for the Governance of State Bodies". This section also

makes provisions for appointment of members of the Audit Committee.

Section 37 sets out the functions of the Audit Committee provided for in *section 36*, which include, inter alia, advising the Garda Commissioner on financial matters relating to his or her functions and providing the Minister for Justice, Equality and Law Reform with copies of reports which it makes to the Commissioner under this section.

Section 38 provides a statutory basis for the existing practice of the preparation of an annual report by the Garda Síochána and the submission of this to the Minister for Justice, Equality and Law Reform, and gives the Minister authority to direct the inclusion in the annual report of specified information.

Section 39 provides that the Garda Commissioner shall compile, store and supply criminal statistics to the Minister for Justice, Equality and Law Reform in a manner required by the Minister.

Section 40 provides a statutory basis for requiring the submission of a report by the Garda Commissioner on a policing or security matter as may be required by the Minister for Justice, Equality and Law Reform. This section also requires the Commissioner to keep the Minister fully informed about significant developments in policing and security matters and, in this regard, implements a recommendation contained in the report on Performance and Accountability.

Chapter 6

Liability

Section 41 provides that the State is liable to an action for damages in respect of damage resulting from an actionable wrong committed by a member of the Garda Síochána who was acting in the course of performing the member's functions under this Act as if the State were the employer of the member.

Section 42 provides that the Minister for Justice, Equality and Law Reform may contribute to the legal costs of a member of the Garda Síochána who is charged with a criminal offence in circumstances where the act alleged was related to the member's duties and where the member's financial circumstances are such that the costs would cause undue hardship. The section also provides that the cost of any contribution made will not exceed that which would be payable in respect of a legally aided person under the statutory Criminal Legal Aid Scheme.

Chapter 7

International Service and Co-operation with other Police Services

Section 43 defines certain words and terms used in Chapter 7 of the Bill.

Section 44 provides for the assignment of members of the Garda Síochána on international service and reflects the nature and scope of Garda overseas service which has grown over the last 15 years. *Subsection (1)* provides that the assignment of eligible members to

perform duties of a police character with an international organisation such as the UN is a matter for the Government whereas the Garda Commissioner may assign eligible members to perform liaison duties and other overseas duties as is provided under *subsection (2)*.

Section 45 provides for the appointment of members of the Police Service of Northern Ireland to certain ranks in the Garda Síochána (*sections 45 to 49* re-enact the provision of the Garda Síochána (Police Co-operation) Act 2003).

Section 46 provides for the secondment of members of the Police Service of Northern Ireland to certain ranks in the Garda Síochána.

Section 47 provides for the secondment of members of the Garda Síochána to certain ranks in the Police Service of Northern Ireland.

Section 48 provides for the disciplinary procedure to apply to members of the Garda Síochána who are seconded to the Police Service of Northern Ireland.

Section 49 provides for the disciplinary procedure to apply to members of the Police Service of Northern Ireland who are seconded to the Garda Síochána.

Section 50 provides for the keeping of records in regard to certain births and deaths relating to members of the Garda Síochána who are serving outside the State.

Section 51 sets out the duties of the General Registrar of Births, Marriages and Deaths in relation to records of members of the Garda Síochána who are serving outside the State.

Chapter 8

Offences and Disclosure of Information

Section 52 provides for an offence of causing disaffection among members of the Garda Síochána. The section provides that a person who causes, or does any act calculated to cause, disaffection among the members of the Garda Síochána, including volunteer members, or does any act calculated to induce any such member to withhold his or her services or commit a breach of discipline shall be guilty of an offence and sets out the penalties which apply following conviction of such an offence.

Section 53 provides for an offence of impersonation of a member of the Garda Síochána and sets out the penalties which apply on conviction of such an offence.

Section 54 makes provision for other offences relating to impersonation and the penalties that apply.

Section 55 provides for an offence of disclosure of information. *Subsection (1)* requires members of the Garda Síochána, civilian staff of the Garda Síochána and persons employed under a contract to work with or for the Garda Síochána not to disclose information obtained in the course of performing their duty if such persons know that the disclosure of the information is likely to have “harmful effect”. “Harmful effect” is defined in *subsection (2)*.

The prohibition on the disclosure of information provided for in *subsection (1)* is disapplied in *subsection (3)* to allow for communication with those bodies with which the Garda Síochána have normal day to day dealings, for example the law officers of the State. Disclosures and communications authorised by law or the Garda Commissioner are also permitted.

Subsection (5) provides that a person who contravenes *subsection (1)* is guilty of an offence and is liable, on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both. *Subsection (6)* creates an aggravated offence involving corruption attracting a more severe penalty of a fine not exceeding €75,000 or imprisonment for a term not exceeding 7 years or both.

Part 3 — Establishment and Functions of Garda Síochána Ombudsman Commission

Section 56 provides for the establishment day for this part of the Bill.

Section 57 provides for the establishment of the Garda Síochána Ombudsman Commission.

Section 58 provides for the membership and the manner of appointment of the members of the Garda Síochána Ombudsman Commission. The Commission will comprise three members all of whom will be appointed by the President, on the nomination of the Government, following the approval of resolutions recommending their appointment passed by both Houses of the Oireachtas.

Section 59 provides for the terms and conditions under which members of the Commission will hold office and the arrangements for filling vacancies among the membership. Members of the Commission will be appointed for a minimum of 3 years, but not exceeding 6 years and they may be reappointed for a second term.

Section 60 provides for the objectives of the Commission and its functions in relation to the receipt and investigation of complaints by members of the public under *Part 4*; the reporting of its findings following an investigation under *Part 4* to the Garda Commissioner or the Director of Public Prosecutions; other investigations under *section 94*; the development of guidelines for the informal resolution of complaints of a minor nature under *section 82* and the making of procedural rules under *section 87* for investigations into complaints that appear not to involve offences; the examination of policies and procedures of the Garda Síochána under *section 98* and the drawing up of protocols with the Garda Commissioner under *section 100*.

Section 61 provides for the resignation or removal of a member of the Ombudsman Commission under certain circumstances.

Section 62 is a standard provision providing for the seal of the Ombudsman Commission.

Sections 63 and 64 and *Schedule 2* provide for the officers of the Ombudsman Commission and the transfer of existing staff of the Garda Síochána Complaints Board to the Commission respectively.

Section 65 provides for the designation of officers of the Ombudsman Commission for the purpose of their performing functions under

Part 4. Provision is made for the Ombudsman Commission to provide a warrant card identifying and authorising the persons so designated to undertake the functions specified on the warrant card.

Section 66 provides for the Ombudsman Commission to enter into arrangements with the Garda Síochána, other police forces, or other bodies, for the temporary engagement of persons to assist it in performing its functions and the provisions relating to such arrangements.

Section 67 provides for the Ombudsman Commission to delegate, subject to certain exceptions, any of its functions to one of its members or its officers, or to any person engaged under *section 66*.

Section 68 is a standard provision concerning the making of grants in accordance with Government Accounting Rules to the Ombudsman Commission to meet its operational costs.

Section 69 is a standard provision relating to the maintenance by the Ombudsman Commission of accounts, their submission to the Comptroller and Auditor General and scrutiny by the Oireachtas.

Sections 70 and 71 are standard provisions relating to the accountability of the Ombudsman Commission to the Committee of Public Accounts and other Oireachtas Committees. Provision is made for the Commission to nominate one of its members for these purposes.

Section 72 provides for the submission by the Ombudsman Commission of various reports to the Minister who shall lay them before the Houses of the Oireachtas.

Section 73 provides for an offence of harmful disclosure of information by a member or an officer of the Commission. This provision recreates, with the necessary modifications, the offence applicable to the Garda Síochána under *section 55*. It is, similarly, in addition to the provisions of the Official Secrets Act 1963. Substantial penalties are provided for in respect of contraventions by persons of these provisions.

Part 4 — Complaints, Investigations and Other Procedures

Section 74 defines certain words and terms used in this part of the Bill.

Section 75 provides for the procedure to be followed by members of the public when making a complaint against a member of the Garda Síochána.

Section 76 provides for the time limit applicable to the making of complaints. Complaints must be made within 6 months from the date of the conduct, the subject of the complaint. However, it will be open to the Ombudsman Commission to extend the time limit if there are good reasons for doing so.

Sections 77 and 78 provide for the administrative procedures for the recording of complaints received by members of the Garda Síochána and the Ombudsman Commission, respectively.

Section 79 provides for the criteria to be applied by the Ombudsman Commission in determining the admissibility of complaints.

Section 80 provides for the notification procedures to be followed by the Ombudsman Commission, following a determination in relation to the admissibility of a complaint.

Section 81 places certain obligations on the Garda Commissioner in relation to ensuring that members of the Garda Síochána, on becoming aware of a complaint, take steps to obtain and preserve evidence relating to the conduct, the subject of the complaint.

Section 82 provides for the development of guidelines by the Ombudsman Commission in relation to the resolution of complaints, by mediation or other informal means, and for the conditions applying to complaints resolved in such manner. The complainant and the member of the Garda Síochána, the subject of the complaint, must consent to the informal resolution of a complaint.

Section 83 provides for the immediate examination by a designated officer of the Ombudsman Commission of complaints concerning the death of, or serious harm caused to, a person as a result of Garda operations, or while in Garda custody or care, with a view to determining the nature of the further investigations to be carried out by the Commission.

Section 84 provides for the methods by which complaints, other than those referred to in *Sections 82* or *83*, may be investigated. These include investigation under *section 86* by a member of the Garda Síochána under the Garda Disciplinary Regulations and provision is made for supervision of such investigations by the Ombudsman Commission in certain circumstances, or investigation by the Commission itself under *section 87*, where no criminal offence appears to be involved, or *section 90*, where a criminal offence appears to be involved.

Section 85 provides for the discontinuation of investigations into complaints in certain circumstances by the Ombudsman Commission.

Section 86 provides for the referral of a complaint by the Ombudsman Commission to the Garda Commissioner for investigation under the Garda Disciplinary Regulations and outlines the supervisory role the Commission may take during the investigation. If dissatisfied with the outcome of an investigation that is not supervised by the Ombudsman Commission, the complainant may seek to have the matter reviewed by the Ombudsman Commission. Having considered such a request, the Commission may request the Garda Commissioner to review the matter, or it may conduct an investigation itself under *sections 87* or *90*.

Sections 87 and *88* provide for the investigation of complaints, that appear not to involve offences, by the Ombudsman Commission. The investigation will be conducted by way of an inquiry and in conducting its inquiry the Commission may require persons to provide any information, document or thing in their possession which is relevant to the inquiry and answer fully and truthfully any questions put to them by the Commission. Any such requirement by the Ombudsman Commission can, if a person fails to comply with it, be confirmed by an order of the Circuit Court, and it will be an offence to fail to comply with the court order. Provision is made for the Minister for Justice, Equality and Law Reform to issue directions protecting from disclosure any security-sensitive information in certain circumstances. It is provided that the Ombudsman Commission may make rules governing the procedure to be followed during such investigations. It is also provided that an investigation by the

Ombudsman Commission under this section will not preclude a subsequent investigation under *section 90*.

Section 89 provides for the making of a report by the Ombudsman Commission to the Garda Commissioner following a supervised Garda investigation under *section 86*, or an investigation by the Commission itself under *section 87*. Such report must include a recommendation about whether or not disciplinary proceedings should be brought against the member of the Garda Síochána concerned, the reasons for the recommendation and such particulars relating to the disciplinary proceedings to be instituted against the member that the Commission considers appropriate.

Section 90 provides for investigations into complaints where offences appear to be involved. For the purpose of conducting such investigations, provision is made for designated officers of the Ombudsman Commission to have all of the powers, immunities and privileges conferred and all of the duties imposed on any member of the Garda Síochána, including the power of arrest, detention and the taking of forensic samples, except powers under the Offences against the State Acts and the power to seek an interception of a postal packet or telecommunication under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993. However, a designated officer will have the power, with the approval of a member of the Ombudsman Commission, to obtain access to telecommunication records. Designated officers of the Ombudsman Commission must carry a warrant card while exercising any of the powers conferred, or performing any of the duties imposed under the Bill. Provision is made for the offence of obstructing or interfering with a designated officer while exercising his or her powers or performing his or her duties. An investigation by the Ombudsman Commission under this section will not preclude a subsequent investigation under *section 87*.

Section 91 provides for the search of a Garda Síochána station by a designated officer of the Ombudsman Commission in circumstances where a member of the Garda Síochána may have committed an offence. A search of a Garda station will only be carried out on foot of an order by a member of the Ombudsman Commission, who must also notify the Garda Commissioner and the Minister for Justice, Equality and Law Reform of the intended search. Provision is made for the Garda Commissioner to apply to the Minister objecting to the search, but only on grounds relating to the security of the State. It will be open to the Minister to issue directions excluding from the search any part of the premises in question or any storage facility containing information or documentation, or to impose other conditions, relating to the security of the State, as the Minister considers appropriate in certain circumstances. Provision is made for the offence of obstructing or failing to comply with a direction of a designated officer of the Ombudsman Commission during the course of a search.

Section 92 provides for judicial oversight of the operation of provisions in the Act authorising the withholding of, or denying access to, information on grounds of State security. Such oversight will be undertaken by a designated judge of the High Court who will report to the Taoiseach in that regard from time to time. Subject to the exclusion from such report of any matters considered by the Taoiseach to be prejudicial to the security of the State, the Taoiseach will lay copies of the report before the Houses of the Oireachtas.

Section 93 provides for the submission of a report by the designated officer of the Ombudsman Commission following an investigation under *section 90*. If the Ombudsman Commission considers that the report discloses a criminal offence, it must send a copy of the report and the investigation file to the Director of Public Prosecutions with whatever recommendations the Commission considers appropriate. It will be open to the Commission to refer a report on a complaint at any time to the Director of Public Prosecutions if it is of the opinion that the report discloses a criminal offence. The conviction of a member of the Garda Síochána for an offence in respect of a matter referred to the Director of Public Prosecutions, or a decision by the Director not to institute a prosecution, will not preclude the Ombudsman Commission from conducting or continuing an investigation under *section 87*. If the Commission considers that the report does not disclose a criminal offence, it may investigate the complaint under *section 86* or *87*.

Section 94 provides for other investigations to be carried out by the Ombudsman Commission, either of its own motion or at the request of the Garda Commissioner or the Minister for Justice, Equality and Law Reform. The Commission may investigate any matter that appears to it to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person or, if the Commission considers it desirable in the public interest to do so, investigate any matter that appears to it to indicate that a member of the Garda Síochána may have committed an offence or breached discipline.

Provision is also made for the Commission to investigate a matter referred to it (i) by the Garda Commissioner, where the Commissioner considers that the conduct of a member may have resulted in the death of, or serious harm to a person or (ii) by the Minister for Justice, Equality and Law Reform, if it appears to the Minister that a member of the Garda Síochána may have committed an offence or breached discipline, and the Minister considers it desirable in the public interest for the matter to be investigated.

Section 95 provides for the Ombudsman Commission to keep certain parties informed of the progress and results of an investigation.

Section 96 amends the Petty Sessions (Ireland) Act 1851 by providing for the extension of the time limit imposed in section 10(4) from 6 months to 12 months from the date of an offence, in respect of summary proceedings relating to an offence reported to the Director of Public Prosecutions under this Act.

Section 97 provides that a member of the Garda Síochána may charge another member of the Garda Síochána with an offence, even if it could become the subject matter of a complaint. However, if a complaint has already been made about the conduct of a member of the Garda Síochána, the member cannot be charged with an offence relating to the conduct involved, unless by or with the consent of the Director of Public Prosecutions.

Sections 98 and *99* provide for the Minister for Justice, Equality and Law Reform to request the Ombudsman Commission to examine a practice, policy or procedure of the Garda Síochána, with a view to preventing or reducing the incidence of complaints arising from the practice, policy or procedure. It will also be open to the Ombudsman Commission itself to recommend to the Minister that a practice, policy or procedure be examined. Provision is made for the Garda Commissioner to be notified by the Minister of his or her request and the reasons why the request is being made. Subject to

specified exceptions, the Garda Commissioner must supply the Ombudsman Commission with whatever information or documents it requires. Following the completion of its examination, the Ombudsman Commission must report to the Minister who may publish all or part of the report.

Section 100 provides for written protocols to be drawn up between the Garda Commissioner and the Ombudsman Commission relating to the use of detention facilities by designated officers of the Commission and the application of the 1987 Treatment of Persons in Custody Regulations in these cases, the arrangements for concurrent investigations by the Commission and the Garda Síochána and the sharing of information between the Commission and the Garda Síochána.

Section 101 provides for judicial oversight of the conduct of designated officers of the Ombudsman Commission in exercising their powers or undertaking their duties for the purposes of certain investigations.

Section 102 provides for the offence of knowingly giving false or misleading information to the Ombudsman Commission in relation to a complaint or an investigation. A prosecution cannot be instituted except by, or with the consent of, the Director of Public Prosecutions, following referral of the matter by the Ombudsman Commission.

Section 103 provides for complaints made under the Garda Síochána Complaints Act, 1986, which are already the subject of an investigation at the time of the coming into force of this Act, to be brought to completion under the 1986 Act. Complaints made under the 1986 Act in respect of which an investigation has not commenced, will be deemed to have been made under this Act.

Section 104 provides for certain statements by the members or officers of the Ombudsman Commission and any publication of those statements to be privileged for the purposes of the law of defamation.

Part 5

Regulations and Miscellaneous Provisions

Section 105 provides a general power for the Minister for Justice, Equality and Law Reform to make regulations for any matter referred to in the *Act*. Such regulations may be made following consultation with the Garda Commissioner and with the approval of the Government.

Section 106 provides that the Minister for Justice, Equality and Law Reform may make regulations, following consultation with the Garda Commissioner and with the approval of the Government, in relation to the management of the Garda Síochána.

Section 107 provides that the Minister for Justice, Equality and Law Reform may make regulations, following consultation with the Garda Commissioner and with the approval of the Government, concerning the maintenance of discipline in the Garda Síochána.

Section 108 provides that the Minister for Justice, Equality and Law Reform may make regulations, following consultation with the

Garda Commissioner and with the approval of the Government, relating to police co-operation provided for under *sections 45 to 49*.

Section 109 provides that the Minister for Justice, Equality and Law Reform may make regulations designating, for the purpose of *section 88*, information or documentation relating to the security of the State which shall not be disclosed, unless the Minister so directs. It is also provided for the Minister to designate, for the purpose of *section 91*, a Garda station where information or documentation relating to the security of the State is held, which shall not be subject to search, unless the Minister so directs. Provision is made for the Minister, with the approval of the Government, to prescribe the form of an authorisation to search a Garda Síochána station.

Section 110 provides that the Minister for Justice, Equality and Law Reform may make regulations, with the concurrence of the Minister for Finance, relating to the Garda Síochána Reward Fund.

Section 111 provides for the continuation in force of existing regulations and orders and for the Minister for Justice, Equality and Law Reform, with the approval of the Government, to amend or revoke an order or regulation continued in force under this section.

Section 112 makes provision for the admissibility of certificate evidence in relation to certain matters in legal proceedings, to be proof of the matters stated in the certificate if signed by a member of the Ombudsman Commission, unless evidence to the contrary is produced.

Section 113 provides that in court proceedings, a person, purporting to be a member of the Garda Síochána of any rank is presumed to be a member of that rank, unless the contrary is proved.

Section 114 provides a statutory basis for State bodies to provide their own security. It provides that authorised bodies designated by the Minister for Justice, Equality and Law Reform may designate named individuals to be security officers for the purpose of that body's property. The powers and obligations of security officers designated by public bodies are set out in the section. Such powers include, for example, the power to search people, refuse entry or remove persons, to demand a person's identity and to seize any weapons or certain property. This measure is designed to free Garda resources from static security duties.

Schedule 1

The enactments specified are repealed to the extent specified in *column 3* of the Schedule.

Schedule 2

Schedule 2 sets out the terms and conditions of staff transferred under *sections 18(8)* and *64(3)*.

Schedule 3

Schedule 3 contains the text of the Intergovernmental Agreement between Ireland and Great Britain and Northern Ireland on police co-operation, signed in Belfast on 29 April, 2002.

Schedule 4

Schedule 4 applies to a person holding judicial office in a superior court who is appointed as a member of the Ombudsman Commission.

Schedule 5

Schedule 5 specifies conduct constituting a breach of discipline.

Financial Implications

The provisions of the Bill reforming the administration and management of the Garda Síochána, and re-defining the roles and relationship between the Garda Commissioner, the Minister for Justice, Equality and Law Reform and the Government should not give rise to extra expenditure of any significance in the Garda Síochána.

The provision in *section 114* for the exercise of security powers by non-Gardaí will enable the more efficient and effective deployment of Garda resources currently dedicated to static security of State bodies.

The appointment of volunteer members of the Garda Síochána under *section 14* would have financial implications, but the extent of these would depend on the numbers appointed and their terms and conditions. The effect of *section 14* is to provide for the establishment of a statutory foundation for such recruitment, should the Government decide, in the future, that this is desirable. If such a decision were taken by the Government, and *section 14* were brought into force by order, the section itself provides that no volunteer members could be appointed for at least 12 months after such commencement.

Section 26, which provides for charges for certain prescribed police services, provides a potential for the recoupment of the cost of those services.

Part 3 of the Bill provides for the replacement of the Garda Síochána Complaints Board by the Garda Síochána Ombudsman Commission. This has staffing and financial implications arising from the proposed more intensive investigatory and supervisory functions of the Commission compared to the present Board.

With regard to the establishment of the Ombudsman Commission, the existing Garda Síochána Complaints Board has approximately 20 staff and an annual budget of approximately €1.4 million. The Ombudsman Commission will require additional resources to enable it to carry out its own investigations into serious complaints, as well as supervising Garda Síochána investigations into others, and the extent of the required resources will be determined as part of the process of establishing the Ombudsman Commission upon the enactment of the Bill.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Feabhra, 2004.