



Bill Digest

Industrial Relations (Amendment) Bill 2018

No. 89 of 2018

Adele McKenna,
Parliamentary Researcher (Social Science)

Wednesday,
09 August 2018

Abstract

The *Industrial Relations (Amendment) Bill 2018* seeks to amend the *Industrial Relations Act 1990* to allow members of An Garda Síochána and their representative associations to access the State's industrial relations mechanisms, namely the Workplace Relations Commission and the Labour Court and to provide for related matters.

Contents

Acronyms	3
Summary	4
Introduction	8
Current Legislation	11
Background to the Bill & Policy Context	13
Industrial Relations mechanisms: In Ireland & Other Jurisdictions	21
General Scheme and Pre-Legislative Scrutiny (PLS)	25
Principal Provisions of the Bill	28
Costs & Implications if enacted	31

Bill published on 18 July; made publically available on 20 July 2018. Digest published: 08 August 2018.

This Digest may be cited as: Oireachtas Library & Research Service, 2018. *Bill Digest – Industrial Relations (Amendment) Bill 2018*

Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as Bill Digests are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

Acronyms

AGCS	Association of Garda Chief Superintendents
AGS	An Garda Síochána ¹
AGSI	Association of Garda Sergeants and Inspectors
BUIRA	British Universities Industrial Relations Association
DBEI	Department of Business, Enterprise and Innovation
DPER	Department of Public Expenditure and Reform
EuroCOP	European Confederation of Police
ECSR	European Committee of Social Rights
GRA	Garda Representative Association
ICTU	Irish Congress of Trade Unions
IR	Industrial Relations
LC	Labour Court
OPC	Office of the Parliamentary Counsel
RIA	Regulatory Impact Analysis
WRC	Workplace Relations Commission

¹ The acronym for An Garda Síochána and the Association of Garda Superintendents is the same – AGS. To avoid potential confusion the acronym AGS will be used throughout this Digest in relation to An Garda Síochána only. Any reference to the Association of Garda Superintendents will not be abbreviated.

Summary

Introduction

The [*Industrial Relations \(Amendment\) Bill 2018*](#) seeks to amend the *Industrial Relations Act 1990* to provide members of An Garda Síochána (AGS)² with access to the State's industrial relations mechanisms, namely the Workplace Relations Commission (WRC) and the Labour Court (LC).

The objectives of the Bill are to:

- Provide members of AGS and their representative bodies with access to the State's Industrial Relations (IR) mechanisms;
- Provide clarification on the Industrial Relations Acts which will **not** apply to members of AGS.

Members of AGS are prohibited from forming or joining trade unions and from engaging in industrial disputes, including strike action. The bill does **not** propose to change this.

Background

The two main pieces of legislation governing industrial relations issues, as they relate to members of the Garda Síochána are:

- *Industrial Relations Act 1990*; and
- *Garda Síochána Act 2005*.

Section 8 of the *Industrial Relations Act 1990* provides a definition of 'worker'³ which explicitly excludes members of AGS. Section 23 of the *Act of 1990* lists the types of 'workers' who may avail of the Workplace Relations Commission (WRC) and the Labour Court (LC). Since members of AGS are explicitly excluded from this definition of worker they have not been permitted access to the State's industrial relations mechanisms to date. Section 18 (3) of the *Garda Síochána Act 2005* prohibits members of AGS from being or becoming a member of any trade union or association (other than their own representative associations), any object of which is to control or influence the pay, pensions or conditions of service of AGS. It is an offence under the *Act of 2005* to induce, or to do any act calculated to induce any member of the Garda Síochána to withhold his or her services or to commit a breach of discipline (e.g. to strike).

² With the exception of the Garda Commissioner and members of the reserve force

³ Worker' is defined as "any person who is or was employed whether or not in the employment of the employer with whom a trade dispute arises, but does not include a member of the Defence Forces or of the Garda Síochána." (Section 8, *Industrial Relations Act 1990*, Irish Statute Books)
<http://www.irishstatutebook.ie/eli/1990/act/19/section/8/enacted/en/html#sec8>

The main industrial relations mechanism available to AGS at present is the Conciliation and Arbitration (C&A) Scheme, an internal industrial relations mechanism for members of AGS to engage in disputes with Garda management. However, this scheme is largely defunct. The *'Haddington Road' Public Service Stability Agreement (2013-2016)* contained a commitment to conduct a review of An Garda Síochána, in particular the appropriate structures and mechanisms for the future resolution of issues relating to pay, industrial relations and attendance matters.⁴

The *Act of 1990 (section 23)* and the *Act of 2005 (section 18)* **prevent members of AGS from joining or forming trade unions or engaging in industrial disputes including strike action.**

The provisions also prohibit Garda representative associations from engaging with or joining umbrella organisations⁵. This is to prevent conflicting demands on AGS members, who, as members of a trade union affiliated with an umbrella organisation might be expected to police a protest by other ICTU trade union members or to cross a picket line set up by other ICTU members (for reasons of public order or to secure State infrastructure)⁶.

AGS's role as a disciplined force is seen as incompatible with industrial disputes, especially strike action. Therefore a number of specific provisions were introduced to regulate such an occurrence. Section 8 of the *Act of 1990* excludes members of AGS from the definition of 'worker', while [Regulation 5 of the 2007 Regulations](#) (SI 214/2007) states that disobedience of orders and neglect of duty will be viewed as breaches of discipline⁷.

The following developments have shaped the policy context relating to AGS and their industrial relations issues over the past number of years:

- The [EuroCOP⁸ versus Ireland](#) case and the subsequent ruling of the [European Committee of Social Rights \(ECSR\)](#);
- The [Haddington Road Review of An Garda Síochána](#) (known as the Horgan Report)⁹; and
- The [First Report of the Cross Departmental Working Group on Industrial Relations Structures for An Garda Síochána](#).

A detailed overview of each of the policy developments listed above is available on page 13.

⁴ <https://www.per.gov.ie/en/haddington-road-agreement/>

⁵ Such as ICTU/Congress

⁶ See examples in Horgan Report (2016) Pp. 43

⁷ S.I. No. 214/2007 - Garda Síochána (Discipline) Regulations 2007

⁸ <http://www.irishstatutebook.ie/eli/2007/si/214/made/en/print>

⁸ http://www.eurocop.org/fileadmin/user_upload/Social_Rights_for_Police.pdf

⁹ [https://jobs.justice.ie/en/JELR/Horgan%20Review%20\(Dec%202016\).pdf/Files/Horgan%20Review%20\(Dec%202016\).pdf](https://jobs.justice.ie/en/JELR/Horgan%20Review%20(Dec%202016).pdf/Files/Horgan%20Review%20(Dec%202016).pdf)

Industrial Relations Mechanisms

The two main industrial relations institutions within the Irish State are:

- The [Workplace Relations Commission](#) (WRC)¹⁰, and
- The [Labour Court](#)¹¹ (LC).

The Bill seeks to provide members of the Garda Síochána and their representative associations with access to the WRC and LC, on a statutory basis, for the first time. The WRC is an independent statutory body established under the Workplace Relations Act 2015. It has responsibility for promoting improved workplace relations and the maintenance of good workplace relations and other duties. The LC is not a court of law but an industrial relations tribunal and its recommendations are non-binding. Parties are expected to give serious consideration to the Courts recommendations but ultimate responsibility for settlement of disputes rests with both parties. In other jurisdictions such as the United Kingdom (UK), New Zealand and Australia, the rights of members of law enforcement to engage in industrial action are restricted¹². Joining or forming trade unions in these jurisdictions is also prohibited.

Provisions of the Bill

The Bill proposes to amend the *Industrial Relations Act 1990* in three ways:

- By amending definitions;
- By allowing members of AGS to access industrial relations mechanisms, and,
- By inserting a sixth schedule to the *Act of 1990* listing the Acts to which section 23 (1A) and 23 (1B) will not apply.

Section 2 of the Bill proposes to insert four definitions in section 3 of the *Act of 1990* relating to AGS;

- ‘Act of 2005’ means the *Garda Síochána Act 2005*
- ‘Garda Commissioner’ means the Commissioner of the Garda Síochána;
- ‘Garda Síochána’ means the police force referred to in the *Act of 2005*;
- ‘Member’ of the Garda Síochána has the same meaning as that used in the *Act of 2005*, (‘a member of any rank’) but for the purpose of this Bill, Garda Commissioner and reserve members are specifically excluded from the definition of ‘member’.

Section 23 (1) of the Act of 1990 is amended by Section 3(a) of the Bill which proposes to insert a reference to “a member of the Garda Síochána” into the definition of “worker”.

Sub - section (1C) (a) provides that nothing in the previous subsections will affect the operation of section 18(3) of the *Act of 2005* which states that a member of AGS cannot become a member of

¹⁰ https://www.workplacerelations.ie/en/What_You_Should_Know/Industrial_Relations/

¹¹ https://www.workplacerelations.ie/en/WR_Bodies/Labour_Court/Labour_Court.html

¹² Common law jurisdictions used for comparison in *First Report of the Working Group on Industrial Relations Structures for An Garda Síochána* (2017), Pp.25

a trade union. Subsection (1C)(b) provides that the changes proposed in section 3 of the Bill will not apply the *Trade Union Acts 1871 to 1990* to members of AGS. Finally, subsection (1D) provides that the Acts listed in the Sixth schedule to the 1990 Act will not apply (either in part or as a whole) to a 'worker', where that worker is a member of the Garda Síochána. Section 4(1) of the Bill proposes to amend the *Act of 1990* by inserting a new schedule listing the Acts (some in their entirety and others by part or section) to which section 23 (1A) and 23 (1B) of the *Act of 1990* will not apply (Access the full schedule [here](#)¹³).

Costs & Implications of the Bill

The [Regulatory Impact Analysis \(RIA\)](#) which accompanied the Bill provides an assessment under three headings of the potential effect of this legislation.¹⁴ The table below illustrates these.

Table 1: Summary of Regulatory Impact Analysis for *Industrial Relations (Amendment) Bill*

Bill	Department Analysis
Benefits	<ul style="list-style-type: none"> ✓ The commitment to publish legislation will be "<i>honoured</i>"¹⁵; ✓ Disputes between members of AGS and management may be resolved as members of AGS will have access to the State's IR mechanisms for the first time.; ✓ The "<i>safety and security of the State</i>" will be ensured.
Costs	<ul style="list-style-type: none"> ✓ "<i>Resource implications</i>"¹⁶ will arise for the WRC, the LC and possibly AGS; ✓ Anticipate 1,500 additional claims (10% increase) for WRC/LC¹⁷ ✓ Application to DPER for increased funding in Budget 2019
Impact	<ul style="list-style-type: none"> ✓ For the first time, members of AGS will have a legal entitlement to access IR mechanisms available to other categories of worker ✓ Other impacts: "<i>None envisaged.</i>"¹⁸

¹³ <https://data.oireachtas.ie/ie/oireachtas/bill/2018/89/eng/initiated/b8918d.pdf> Pp.5

¹⁴ <https://dbei.gov.ie/en/Legislation/Legislation-Files/RIA-Industrial-Relations-Amendment-Bill-2018.pdf>

¹⁵ Department of Business, Enterprise and Innovation (2018), Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

¹⁶ Department of Business, Enterprise and Innovation (2018), Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

¹⁷ A 'conservative estimate' according to the RIA

¹⁸ Department of Business, Enterprise and Innovation (2018), Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 4

Introduction

The [*Industrial Relations \(Amendment\) Bill 2018*](#) (hereafter “the Bill”) was published on the 18th July and made available on the Houses of the Oireachtas website on 20th July 2018.¹⁹ The Bill seeks to amend the *Industrial Relations Act 1990* (hereafter known as “the Act of 1990”). The purpose of the Bill is to²⁰:

“[F]acilitate access to the Workplace Relations Commission (WRC) and the Labour Court by members of the garda force to assist in the resolution of industrial disputes.”

Furthermore, the Bill, once enacted, will²¹:

“[A]llow members of An Garda Síochána to avail of the broad suite of services including mediation, conciliation and adjudication, of the WRC and ultimately the services of the Labour Court in the event of industrial relations disputes involving members arising.”

The key objectives of the *Industrial Relations (Amendment) Bill 2018* are outlined below.

Key objectives of the Bill

The Bill seeks to:

- Provide members of An Garda Síochána (AGS) and their representative bodies with access to the State’s Industrial Relations (IR) mechanisms;
- Provide clarification on the Industrial Relations Acts to which will **not** apply to members of AGS.

The Minister for Justice and Equality has overall responsibility for An Garda Síochána, including the prevention and resolution of disputes. However, the Minister for Business, Enterprise and Innovation has responsibility for the legislation required to amend the Industrial Relations Acts in order to give members of AGS access to the State industrial relations institutions.

A Department of Business, Enterprise and Innovation (DBEI) [press release](#) issued alongside the Bill states that the legislation, once enacted, will deliver on a commitment made by Government to Garda representative bodies in November 2016, following a serious and potentially disruptive dispute between members of AGS and Garda management.²²

¹⁹ <https://data.oireachtas.ie/ie/oireachtas/bill/2018/89/eng/initiated/b8918d.pdf>

²⁰ *Industrial Relations (Amendment) Bill 2018* Explanatory Memorandum, Pp. 1, <https://data.oireachtas.ie/ie/oireachtas/bill/2018/89/eng/memo/b8918d-memo.pdf>

²¹ *Industrial Relations (Amendment) Bill 2018* Explanatory Memorandum, Pp. 1, <https://data.oireachtas.ie/ie/oireachtas/bill/2018/89/eng/memo/b8918d-memo.pdf>

²² <https://dbei.gov.ie/en/News-And-Events/Department-News/2018/July/20072018.html>

In the press release Minister for Business, Enterprise and Innovation, Heather Humphreys, T.D., stated that AGS is working to develop robust internal dispute resolution procedures **before** cases will be referred to the WRC or the Labour Court. Minister Humphreys went on to state that²³:

“This legislation will be commenced once these internal procedures are in place within An Garda Síochána.”²⁴

Table 1 below sets out the contents of the Bill and briefly describes the purpose of each section.

Table 2: Summary of the Bill

Section	Title	Purpose
1.	Definition	A standard provision used to define terms, the ‘Act of 1990’ means the Industrial Relations Act 1990 ²⁵
2.	Amendment of section 3 of Act of 1990	Section 2 of the Bill seeks to amend section 3 of the Act of 1990 by inserting a number of definitions to the Act, including: ‘Garda Síochána’ which means the police service referred to in section 6 of the Act of 2005; ‘member’, in relation to the Garda Síochána, has the same meaning as it has in the Act of 2005, but does not include (a) the Garda Commissioner, or (b) a reserve member within the meaning of the Act of 2005.
3.	Amendment of section 23 of Act of 1990	Section 3 of the Bill seeks to amend section 23 of the Act of 1990 to allow members of An Garda Síochána and their representative bodies to access industrial relations mechanisms which were not previously available to them; specifically and limited to the Workplace Relations Commission and the Labour Court.
4.	Enactments to which section 23(1A) and 23 (1B) of Act of 1990 shall not apply to members of the Garda Síochána	Section 4 of the Bill seeks to insert a new schedule after the fifth schedule in the Act of 1990 which will list the Industrial Relations Acts or sections of these Acts not applicable to members of the Garda Síochána.
5.	Short title and commencement	A standard provision which provides the title by which the proposed Act will be known. The proposed Act will come into operation on such day or days as the Minister deems appropriate.

²³ Emphasis author’s own

²⁴ <https://dbe.gov.ie/en/News-And-Events/Department-News/2018/July/20072018.html>

²⁵ <http://www.irishstatutebook.ie/eli/1990/act/19/enacted/en/html>

Textbox 1 below provides a list of related resources published by the Houses of the Oireachtas Library and Research Service (L&RS).

Textbox 1: Further related Library and Research Service (L&RS) resources²⁶

On this Bill: L&RS [Bills Tracker page on the Industrial Relations \(Amendment\) Bill 2018](#)²⁷

On previous Bills: [Digest on Workplace Relations Bill 2014](#)²⁸ (which established the Workplace Relations Commission)²⁹

Other related L&RS resources: [L&RS blog post on Threatened Industrial Action by An Garda Síochána](#) (11th October 2016)

The following section examines the legislation which currently precludes members of AGS from accessing certain industrial relations mechanisms.

²⁶ Certain of these resources may only be available via the Houses of the Oireachtas internal resource network

²⁷ <http://eolas.library.oireachtas.local/industrial-relations-act-1990-amendment-bill/>

²⁸ http://vhllms-a01/AWDData/Library2/billWorkplaceRelations071014_124651.pdf

²⁹ This Digest was published in advance of Second Stage debate on the Workplace Relations Bill 2014 which took place in Dáil Éireann on 08 October 2014.

Current Legislation

The two main pieces of legislation governing industrial relations issues, as they relate to members of the Garda Síochána are:

- *Industrial Relations Act 1990; and*
- *Garda Síochána Act 2005.*

Industrial Relations

The British Universities Industrial Relations Association (BUIRA) defines industrial relations as being “*the dynamic of the employment relationship between employees and the employer.*”³⁰

Industrial Relations Act 1990

The definition of ‘worker’ used in section 8 of the *Act of 1990* explicitly excludes members of AGS. ‘Worker’ is defined as “*any person who is or was employed whether or not in the employment of the employer with whom a trade dispute arises, but does not include a member of the Defence Forces or of the Garda Síochána.*”³¹

Section 23 of the *Act of 1990* lists the types of workers who may avail of the Workplace Relations Commission (WRC) and the Labour Court (LC). Members of AGS are specifically excluded from the definition of ‘worker’ thus blocking their access to the State’s industrial relations mechanisms.

Garda Síochána Act 2005

Section 18(1) of the [Garda Síochána Act 2005](#) permits the establishment of associations to represent members of AGS in all matters affecting their welfare and efficiency (including pay, pensions and conditions of service).

However, section 18(3) prohibits members of AGS from being or becoming a member of any trade union or association (other than their representative associations), any object of which is to control or influence the pay, pensions or conditions of service of AGS.

It is an offence under the *Act of 2005* to induce, or to do any act calculated to induce any member of the Garda Síochána to withhold his or her services or to commit a breach of discipline (e.g. to strike).

³⁰ <https://www.buira.org/home> (Sourced 09 July 2018)

³¹ Section 8, *Industrial Relations Act 1990*, Irish Statute Books
<http://www.irishstatutebook.ie/eli/1990/act/19/section/8/enacted/en/html#sec8>

Any person found guilty of such an offence is liable:

- (a) On summary conviction, to a Class B fine (i.e. a fine not exceeding €3,000) and/or imprisonment for a term not exceeding 12 months, or
- (b) On conviction on indictment, to a fine not exceeding €50,000 and/or imprisonment for a term not exceeding 5 years.

The restrictions in the legislation placed on members of AGS were meant to deter them from engaging in strike action since AGS is a monopoly service, encompassing the national security service and to do so would put public safety and order in jeopardy.

The following section provides relevant background information on the *Industrial Relations (Amendment) Bill 2018* and situates it within the broader policy context of access to industrial relations mechanisms for members of AGS.

Background & Policy Context

The *Industrial Relations (Amendment) Bill 2018*, once enacted, will allow members of AGS³² access to the State's Industrial Relations (IR) mechanisms. The Bill will place the IR rights of Gardaí and their representative associations on a statutory footing for the first time; allowing them to avail of the services of the WRC and the LC. This section sets out the series of events and the resulting policy responses which ultimately led to the Government's commitment to introduce this legislation.

An Garda Síochána and Industrial Relations: The Current Situation

The pivotal and unique role which AGS play in policing and in the national security of the State (including intelligence gathering and immigration services) influence the types of opportunities available to its members when engaging in industrial relations. Currently, the main industrial relations mechanism available to AGS is the Conciliation and Arbitration (C&A) Scheme.

Conciliation and Arbitration (C&A) Scheme

The C&A Scheme is an internal industrial relations mechanism for members of AGS engaged in disputes with Garda management. It is a statutory scheme and according to the website of the Garda Síochána (www.garda.ie) it “provides for the determination of claims and proposals relating to conditions of service for members...”³³ This includes grievances relating to pay, allowances and other terms and conditions of work. In a report by the cross - departmental *Working Group on the Industrial Relations Structures for An Garda Síochána* the scheme is described as follows³⁴:

“It is similar to those operating in other areas of the public service including the Civil Service, the Defence Forces, and teaching. It provides for a Conciliation Council, an Arbitration Board and an Adjudicator and covers all ranks up to and including the rank of Chief Superintendent.”

The Working Group report acknowledges that the Council no longer meets as frequently as it once did. However, the scheme remains in place. The Working Group makes recommendations in its report for interim measures to revive the work of the Council temporarily until a more permanent revision of the scheme can take place.³⁵ The second report of the Working Group (yet to be published) will focus on reviewing internal dispute resolution mechanisms within AGS and establishing a permanent mechanism following on from the interim measures.

³² Excluding the Garda Commissioner and members of the reserves

³³ <https://www.garda.ie/en/About-Us/Our-Departments/Human-Resources-and-People-Development/Garda-HRM-Division/Human-Resource-Management-Functions.html> (Sourced 05/07/2018)

³⁴ First report of the Working Group on Industrial Relations Structures for An Garda Síochána (2017), Pp. 6 [http://www.justice.ie/en/JELR/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf/Files/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.p](http://www.justice.ie/en/JELR/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf/Files/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf)

³⁵ Financial Emergency Measures in the Public Interest legislation <http://paschaldonohoe.ie/statement-on-fempi-by-the-minister-for-public-expenditure-and-reform-paschal-donohoe-td/>

The ‘Haddington Road’ Public Service Stability Agreement (2013-2016) contained a commitment to conduct a review of An Garda Síochána, in particular the appropriate structures and mechanisms for the future resolution of issues relating to pay, industrial relations and attendance matters.³⁶ This review, which was conducted by Mr. John Horgan, criticised the existing industrial relations mechanisms available to members of AGS³⁷:

“In the sense that there is any system of industrial relations it can be described as anarchical, in that it is disordered and is without any defined rules of engagement. It is not working and both sides are dissatisfied with it.”

Membership of Trade Unions & Industrial Action

As outlined in the previous section on the current legal framework, the two main pieces of legislation (namely the *Act of 1990 (section 23)* and the *Act of 2005 (section 18)*) govern industrial relations mechanisms for members of AGS. The legislation prevents members of AGS from joining or forming trade unions or engaging in industrial disputes including strike action.

Trade Union Membership

Section 18 of the [Garda Síochána Act 2005](#) and corresponding regulations, stipulate that **members of AGS cannot form or join any trade union**, other than the four professional associations established under the Garda Acts to represent them³⁸.

The four associations are:

- Garda Representative Association (GRA)
- Association of Garda Sergeants and Inspectors (AGSI)
- Association of Garda Superintendents³⁹
- Association of Garda Chief Superintendents (AGCS)

The provisions set out in section 18 of the *Act of 2005* also prohibit Garda representative associations from engaging with or joining umbrella organisations, such as the Irish Congress of Trade Unions (ICTU). This is to prevent conflicting demands on AGS members, who, as members of a trade union affiliated with an umbrella organisation, i.e. ICTU, might be expected to police a protest by other ICTU trade union members or to cross a picket line set up by other ICTU members (for reasons of public order or to secure State infrastructure)⁴⁰.

Industrial Action

AGS’s role as a disciplined force is seen as incompatible with industrial disputes, especially strike action. Therefore a number of specific provisions were introduced to regulate such an occurrence.

³⁶ <https://www.per.gov.ie/en/haddington-road-agreement/>

³⁷ Horgan report (2016) pp. 56

³⁸ <http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/print.html>

³⁹ The acronym for An Garda Síochána and the Association of Garda Superintendents is the same – AGS. To avoid potential confusion the acronym AGS will be used throughout this Digest in relation to An Garda Síochána only. Any reference to the Association of Garda Superintendents will not be abbreviated.

⁴⁰ See examples in Horgan Report (2016) Pp. 43

*"The Department of Justice said that there was no single specific prohibition on striking by members of An Garda Síochána. However it said that a combination of provisions in law, including the Industrial Relations Act of 1990 and garda discipline regulations effectively precludes strikes."*⁴¹

There 'provisions' are [section 8](#) of the *Industrial Relations Act 1990* and Regulation number 5 of the [Garda Síochána \(Discipline\) Regulations 2007](#)⁴². Section 8 of the Act of 1990 excludes members of AGS from the definition of 'worker', while Regulation 5 of the 2007 Regulations states that: "Any act or conduct by a member which is mentioned in the Schedule constitutes a breach of discipline". The Schedule includes acts/conduct such as disobedience of orders and neglect of duty. As a consequence, should members of AGS choose to engage in strike action they would not be entitled to the protections available to other categories of 'worker.' Garda representative associations have made a number of attempts to circumvent these restrictions in the past; a tactic which became known as 'blue flu'. Blue flu is *"the nickname given ...to industrial action by the Garda Síochána Because Gardaí are forbidden to strike ... [they] instead stayed at home in force on sick leave. The action was named 'blue flu' because of the colour of the Garda uniform."*⁴³

Official Reports and Rulings

The following developments have shaped the policy context relating to AGS and industrial relations issues over the past number of years:

- The EuroCOP *versus* Ireland case and the ruling of the European Committee of Social Rights (ECSR) which resulted;
- The [Haddington Road Review of An Garda Síochána](#) (known as the Horgan Report)⁴⁴; and
- The [First Report of the Cross Departmental Working Group on Industrial Relations Structures for An Garda Síochána](#).

Each of these developments is outlined below.

EuroCOP versus Ireland (2014)

The [European Confederation of Police \(EuroCOP\)](#) (of which AGSI is a member) took a case to the [European Committee of Social Rights \(ECSR\)](#) in 2012 alleging Ireland was in breach of the [European Social Charter](#) by not allowing the Garda representative associations to access the Workplace Relations Commission or the Labour Court^{45 46 47 48}. EuroCOP also argued against

⁴¹ <https://www.rte.ie/news/2016/0906/814706-gardai-gra-ballot/> (Sourced 25 June 2018)

⁴² <http://www.irishstatutebook.ie/eli/2007/si/214/made/en/print>

⁴³ Blue flu. (2009). In S. McMahon, & J. O'Donoghue (Eds.), *Brewer's dictionary of Irish phrase and fable*. London, UK: Chambers Harrap. Retrieved from https://search.credoreference.com/content/entry/orionirishpf/blue_flu/0 (Text abbreviated).

⁴⁴ [https://jobs.justice.ie/en/JELR/Horgan%20Review%20\(Dec%202016\).pdf/Files/Horgan%20Review%20\(Dec%202016\).pdf](https://jobs.justice.ie/en/JELR/Horgan%20Review%20(Dec%202016).pdf/Files/Horgan%20Review%20(Dec%202016).pdf)

⁴⁵ Complaint number 83/2012

⁴⁶ <https://www.coe.int/en/web/turin-european-social-charter/european-committee-of-social-rights> (Sourced 23 July 2018)

⁴⁷ <https://www.coe.int/en/web/turin-european-social-charter/about-the-charter>

⁴⁸ <http://www.eurocop.org/> (Sourced 23 July 2018)

what they characterised as “*insufficient access to pay agreement discussions*” and suggested that members of AGS had been denied their right to take collective action or avail of full trade union rights⁴⁹.

In May 2014, the Committee issued their (non-binding) ruling, that there is no case to answer in relation to providing AGS with full trade union rights (since the Garda representative associations are seen to adequately fill that role). However, the Committee identified a number of other breaches of the Charter as follows:

- Garda associations are not permitted to join national employee organisations (i.e. ICTU in the Irish context) (breach of Article 5);
- Garda associations have restricted access to pay negotiations (breach of Article 6.2); and,
- Garda associations are not permitted to strike (breach of Article 6.4).

The then Minister for Justice and Equality, Frances Fitzgerald, T.D., outlined the State’s response to the Committee’s findings. The Minister informed the Committee of the *Haddington Road Agreement Review of An Garda Síochána* (see below) that one of the main objectives of the review was to identify “*the appropriate structures and mechanism for the future resolution of matters relating to pay, industrial relations and attendance matters.*”⁵⁰

The Minister assured the ECSR that the review would “*take careful note of*”⁵¹ its findings in the EuroCOP case in an effort to “*seek solutions which respect the Charter.*”⁵²

Haddington Road Agreement Review of An Garda Síochána (Horgan report) (2016)

The former Deputy Chairperson of the Labour Court, Mr. John Horgan took over the *Review of An Garda Síochána* in July 2016. The terms of reference of the review related to:

- the remuneration and conditions of service of members of An Garda Síochána, and
- the appropriate structures and mechanism for the future resolution of matters relating to pay, industrial relations and attendant matters.

The review was completed in December 2016. The main findings of the review as they relate to AGS and IR structures and mechanisms as follow:

1. The Garda representative associations should be allowed to **reconstitute as registered trade unions** and join national representative organisations such as ICTU. While this

⁴⁹ EuroCOP position paper on Social Rights, Pp. 2

http://www.eurocop.org/fileadmin/user_upload/Social_Rights_for_Police.pdf

⁵⁰ <http://www.justice.ie/en/JELR/European%20Confederation%20of%20Police.pdf/Files/European%20Confederation%20of%20Police.pdf>

⁵¹ <http://www.justice.ie/en/JELR/European%20Confederation%20of%20Police.pdf/Files/European%20Confederation%20of%20Police.pdf>

⁵² <http://www.justice.ie/en/JELR/European%20Confederation%20of%20Police.pdf/Files/European%20Confederation%20of%20Police.pdf>

change would allow Garda associations to legitimately engage in strike action, the Review report goes on to state that⁵³:

“Strikes should not happen in the police force, especially as this is a monopoly service and the national security service is part of the police service.”

The report’s position in relation to strike action was criticised by the AGSI for being “contradictory.”⁵⁴

2. The review recommended AGS members have access to appropriate internal dispute resolution mechanisms at local level⁵⁵.

*“There is a need for an **internal mechanism** through which individual members or groups can raise issues of concern and have them dealt with expeditiously and fairly. This will require structures and resources to be established.”*

3. The review report recommended that If these negotiations fail the ‘trade unions’ should have **access to the WRC and the LC** in order to avert any future threats of strike action⁵⁶:
“All [parties] should have access to protective employment law, including the right to avail of the processes of WRC and Labour Court.”

Cross Departmental Working Group on Industrial Relations Structures for An Garda Síochána (2017)⁵⁷

The Working Group on Industrial Relations Structures was established in 2017 under an independent Chair, Mr. John Murphy (former Secretary General of the Department of Jobs, Enterprise and Innovation). The working group also comprised officials from various Government Departments, (including Justice and Equality; Jobs, Enterprise and Innovation (as was) and Public Expenditure and Reform), as well as Garda management and the WRC. Garda representative associations did not form part of the Working Group. However, the associations were consulted and invited to make written submissions on each of the main issues addressed in the report.

⁵³ Haddington Road Agreement Review of the Garda Síochána (2016) Pp. 68

⁵⁴ <https://agsi.ie/articles/agsi-respond-john-horgan-report/>

⁵⁵ Haddington Road Agreement Review of the Garda Síochána (2016) Pp. 77

[http://justice.ie/en/JELR/Horgan%20Review%20\(Dec%202016\).pdf/Files/Horgan%20Review%20\(Dec%202016\).pdf](http://justice.ie/en/JELR/Horgan%20Review%20(Dec%202016).pdf/Files/Horgan%20Review%20(Dec%202016).pdf)

⁵⁶ Haddington Road Agreement Review of the Garda Síochána (2016) Pp. 91

⁵⁷ http://www.justice.ie/en/JELR/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf/Files/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf

The Terms of Reference of the Working Group related to:

- Granting Garda associations access to the Workplace Relations Commission (WRC) and the Labour Court (LC);
- Legislation required to support this, and
- Implementation of interim measures to provide AGS with access to robust internal dispute resolution mechanisms.

The Terms of Reference of the Working Group also stipulated that it should pay particular regard to the outcome of the EuroCOP case (noted above) and the recommendations of the Horgan report (noted above).

In its report, the Working Group made a number of recommendations, including the following:

1. Provide AGS with access to the State's Industrial Relations Institutions (Recommendation 6.1.1)⁵⁸: *"The working group concurs with the views of the Garda Associations that providing access to the industrial relations machinery of the State (WRC and LC) is an essential output.."*
2. Garda members should not form or join trade unions (Recommendation 6.2.4):⁵⁹ *"The view of the Working Group is that the unique requirements of An Garda Síochána would not be served by reconstituting the Garda Associations as trade unions."* Furthermore the Working Group asserted that Garda Associations already have an entitlement to engage in collective bargaining as set out in the legislation under which they are constituted, specifically s.18 (1) of the [Garda Síochána Act 2005](#)⁶⁰.

This is contrary to the findings of the ECSR judgement in the EuroCOP case, however, which found Ireland in breach of articles in the Charter which state that police representative bodies should not be prohibited from joining national employee associations [the Irish Congress of Trade Unions (ICTU) in the Irish context](Article 5) or restricted in engaging in pay agreement discussions (Article 6.2).

The Working Group findings on these issue are also at odds with the recommendations relating to trade unions in the Horgan report (2016), namely that members of AGS should have *"the right to join independent trade unions and that those trade unions should have the right to bargain collectively with their employer."*⁶¹

⁵⁸ [First report of the Working Group on Industrial Relations Structures for An Garda Síochána](http://www.justice.ie/en/JELR/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf/Files/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf) (2017) Pp 41

⁵⁹ [First report of the Working Group on Industrial Relations Structures for An Garda Síochána](http://www.irishstatutebook.ie/eli/2005/act/20/section/18/enacted/en/html#sec18) (2017) Pp 43

⁶⁰ <http://www.irishstatutebook.ie/eli/2005/act/20/section/18/enacted/en/html#sec18>

⁶¹ Horgan report (2016), Pp. 63

3. Garda associations should not engage in any form of industrial action, up to and including strike action (Recommendations 6.3.2 and 6.3.3). **Given the pivotal role which AGS plays in national security and maintaining law and order** the Working Group could not consider recommending strike action as an option for AGS⁶². *"It is ...difficult for the Working Group to come to any conclusion that might provide for or enable the withdrawal of these [vital] services."*

The *First report of the Working Group* also identified a series of follow-up actions. Foremost among them, the drafting of heads of a Bill *"to encompass all the legislative changes required to give effect in legislation to the new arrangements for access to the Workplace Relations Commission and the Labour Court."*⁶³ These suggested draft heads are laid out in Appendix E of the report. As part of a consultation process to inform the drafting of the *First Report of the Working Group on Industrial Relations Structures for An Garda Síochána*, all four Garda representative associations made written submissions calling for full access to the WRC and LC for members of AGS, as a matter of priority.

The Terms of Reference of the Working Group also require it to produce a second report which would focus on how IR should operate once Garda associations have been given access to the WRC and the LC and the additional resources required to support this. The deadline identified for completion of the second report was 31st October 2017. This was not met. At time of writing the second report is still outstanding.

Table 2 below provides a synopsis of key events in this area preceding publication of the Bill on 18th July 2018.

⁶² [First report of the Working Group on Industrial Relations Structures for An Garda Síochána](#) (2017) Pp 45

⁶³ First report of the Working Group (2017), Pp. 50

Table 3: Timeline of Events in respect of Industrial Relations Outcomes for AGS

Year	Events
1990	➤ <i>Industrial Relations Act 1990</i> is enacted. S.23 of the <i>Act of 1990</i> excludes members of AGS from the definition of ‘worker’; therefore denying accessing to the Labour Relations Commission (LRC) as was.
2005	➤ <i>Garda Síochána Act 2005</i> is enacted. S. 18(3) specifically prohibits members of AGS from forming or joining trade unions (with the exception of the four Garda associations established to represent them).
2013 - 2016	➤ Haddington Road Public Sector Stability Agreement 2013 – 2016 commits to a review of An Garda Síochána, including the structures and mechanisms for industrial relations.
2014	➤ The European Committee of Social Rights (ECSR) issues its (non-binding) judgement in the case of EuroCOP v. Ireland.
2016	<ul style="list-style-type: none"> ➤ In October AGS representative bodies threaten industrial action (‘blue flu’) over pay, working conditions and access to dispute resolution mechanisms. ➤ In November Government commits to introducing legislation which would provide members of AGS⁶⁴ with a statutory right to access the WRC and the LC. In the mean time, access has been granted on an ad hoc basis.⁶⁵ ➤ In December Haddington Road Agreement: Review of An Garda Síochána (Horgan Report) is published⁶⁶.
2017	<ul style="list-style-type: none"> ➤ First report of the Working Group on Industrial Relations Structures for An Garda Síochána⁶⁷ is published; ➤ General Scheme of the <i>Industrial Relations (Amendment) Bill</i> is published.
2018	➤ <i>Industrial Relations (Amendment) Bill</i> is published

Source: Information adapted by the HOS Library and Research Service

⁶⁴ With the exception of the Commissioner and members of the reserves

⁶⁵ <http://www.justice.ie/en/JELR/Pages/PQ-15-11-2016-126> (Sourced 31 July 2018)

⁶⁶ <https://www.lawlibrary.ie/rss/horgan.pdf>

⁶⁷ http://www.justice.ie/en/JELR/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf/Files/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf

Industrial Relations Mechanisms: In Ireland and Other Jurisdictions

Ireland

The two main industrial relations institutions within the Irish State are:

- The Workplace Relations Commission (WRC), and
- The Labour Court (LC).

The Bill seeks to provide members of the Garda Síochána and their representative associations with access to the WRC and LC, on a statutory basis, for the first time. The Regulatory Impact Analysis (RIA) which accompanies the Bill states that dispute resolution assistance from the WRC or the LC is intended only *“after the internal dispute mechanisms within the Garda force have been exhausted.”*⁶⁸

This section provides information on the establishment, roles and functions of the WRC and the LC.

Textbox 3: The Workplace Relations Commission (WRC)



The Workplace Relations Commission is an independent, statutory body established on 1st October 2015 under the Workplace Relations Act 2015. The Commission has responsibility for:

- Promoting the improvement of workplace relations, and maintenance of good workplace relations;
- Promoting and encouraging compliance with relevant enactments;
- Providing guidance in relation to compliance with codes of practice approved under Section 20 of the Workplace Relations Act 2015;
- Conducting reviews of, and monitoring developments in respect of workplace relations;
- Conducting or commissioning research into matters pertaining to workplace relations and disseminating findings;
- Providing advice and information to Joint Labour Committees and Joint Industrial Councils;
- Advising and apprising the Minister in relation to the application of, and compliance with, relevant enactments, and information to members of the public in relation to employment.

One of the Commission's core functions is the provision of mediation, conciliation, facilitation and advisory services. These services are intended to prevent and resolve workplace disputes and disagreements involving groups of workers, individual workers, employers and their representatives.

⁶⁸ Department of Business, Enterprise and Innovation, Regulatory Impact Analysis of *Industrial Relations (Amendment) Bill*, Pp. 2

Source: Adapted by L&RS from www.workplacerelations.ie

Textbox 4 below provides information on the Labour Court.

Textbox 4: The Labour Court (LC)



The Labour Court is not a court of law. It operates as an industrial relations tribunal, hearing both sides in a case and then issuing a Recommendation (or Determination/Decision/Order, depending of the type of case) setting out its opinion on the dispute and the terms on which it should be settled. Recommendations made by the Court concerning the investigation of disputes are not binding on the parties concerned; however, the parties are expected to give serious consideration to the Court's Recommendation. Ultimately responsibility for the settlement of a dispute rests with the parties. Some of the issues dealt with by the Labour Court include: hours of work, pay claims under national agreements, pensions; and recruitment, among others.

Source: Adapted by L&RS from www.workplacerelations.ie

Other Jurisdictions

In other common law jurisdictions such as the United Kingdom (UK), New Zealand and Australia, the rights of members of law enforcement to engage in industrial action are restricted.⁶⁹ Joining or forming trade unions in these jurisdictions is also prohibited.

- In New Zealand members of the police force have access to specific IR mechanisms set out in the *Police Act 2008* rather than having access to the general industrial relations mechanisms.
- In Australia, members of the police force and their representative bodies may access the main industrial relations mechanisms of the State in relation to disputes over pay and working conditions.
- In the UK, matters of pay and working conditions for police in Wales, England and Northern Ireland are dealt with by the Police Remuneration Review Body (PRRB). This is an

⁶⁹ Comparisons with these common law jurisdictions made in the *First Report of the Working Group on Industrial Relations Mechanisms for An Garda Síochána* (2017), Pp. 25

advisory body providing independent advice to the UK Government on pay and conditions for police officers. In the main, the advice of the PRRB has been accepted by both the Government and the UK Police Associations.⁷⁰

⁷⁰ First Report of the Working Group on Industrial Relations Structures for AGS (2017), Pp. 26

General Scheme and Pre-Legislative Scrutiny (PLS)

The General Scheme of the *Industrial Relations (Amendment) Bill* (draft heads of Bill are [available here](#))⁷¹ was approved by Government in September 2017. The draft heads of Bill were presented to the Joint Committee on Business, Enterprise and Innovation on 22nd May 2018.⁷² However, the Committee concluded that Pre-Legislative Scrutiny (PLS) was not required in this instance.

The General Scheme reflects the contents of the published Bill, with one exception. Head 2 of the General Scheme, entitled ‘Trade Disputes’ makes reference to Part II, section 8 of the Act of 1990 which sets out definitions of ‘worker’. Any reference to section 8 of the Act of 1990 has been omitted from the published Bill. Head 2 of the General Scheme is reproduced in full below:

Textbox 6: Extract from General Scheme of the Industrial Relations (Amendment) Bill 2018

“Head 2 – Trade Disputes

Provide that:

Part II, Section 8 of the Industrial Relations Act 1990 is amended, by the deletion of “but does not include a member of the Defences forces or of the Garda Síochána” and the insertion of “includes a member of An Garda Síochána but does not include a member of the Defences forces”.

In Part II, Section 8 of the Industrial Relations Act 1990, the definition of worker specifically excludes members of Garda Síochána as workers who can be involved in a trade dispute. As a trade dispute means any dispute between employers and workers, the term worker in this section of the Act does not encompass a dispute between members of An Garda Síochána and an employer. The wording in this section would need to include rather than exclude Garda Síochána members to enable them to become involved in a trade dispute under this Act.”

The Houses of the Oireachtas Library & Research Service (L&RS) contacted the Industrial Relations and Workplace Relations Liaison Unit within the Department of Business, Enterprise and Innovation (DBEI) to ask about the removal of the reference to Part II, section 8 of the Act of 1990 from the published Bill and the rationale behind it. The Department responded with the following comments⁷³:

⁷¹ *First report of the working group on Industrial Relations Structures for An Garda Síochána* (2017), Appendix E, Pp.67 http://www.justice.ie/en/JELR/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf/Files/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf

⁷² *First report of the working group on Industrial Relations Structures for An Garda Síochána* (2017), Appendix E, Pp.67 http://www.justice.ie/en/JELR/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf/Files/First_Report_of_the_Working_Group_on_Industrial_Relations_Structures_for_An_Garda_Siochana.pdf

⁷³ Email correspondence to L&RS from DBEI on 13 July 2018

This Department commenced engagement with the Office of the Parliamentary Counsel (OPC)⁷⁴ in early spring this year on the drafting of a Bill to facilitate access by An Garda Síochána to the services of the WRC and the Labour Court. In our engagement with the OPC, it emerged that amendment of Part 2 of the 1990 Act which is essentially part of the Trade Union Acts was not necessary to achieve the policy objective intended.

On 26th September 2017, the week that the General Scheme of the Bill was approved by Cabinet, the Garda Representative Association (GRA) issued a press release stating the following⁷⁵:

“The GRA has previously welcomed the prospect of full rights to attend the State’s industrial relations institutions of the Workplace Relations Commission and the Labour Court.”

However, the press release goes on to criticise what GRA sees as the limited scope of the legislation.⁷⁶

“If such legislation is enacted Gardaí will have fewer rights than all other workers in the public sector and no rights for industrial action... This has potentially stored up future grievances and left the problems encountered last November⁷⁷ in place. Another missed opportunity.”

The RIA which accompanies the Bill, states⁷⁸:

“A schedule to the Bill [also] seeks to actively disapply certain provisions of industrial relations legislation, particularly those relating to provisions around legitimately engaging in strike action, provisions on trade union legislation and provisions on the right to collectively bargain.”

GRA are opposed to the exclusion of these provisions from the Bill.⁷⁹ In their written submissions to the Working Group both GRA and AGSI make specific reference to the importance of Garda members having the same industrial relations entitlement to take strike action as all other workers.⁸⁰ Both associations also call for the implementation of the ECSR judgement in the EuroCOP case, in particular its finding that Ireland is in violation of Article 5 (the right to organise) and Article 6.2 (the right to bargain collectively).⁸¹

“If the government insists on creating further unworkable draconian legislation while denying a determination of the Council of Europe, then it is clear they have little or no regard for our members.”

At time of writing and since it became publically available on the 20 July 2018, the GRA has not issued any further press statements relating to the Bill; nor had any of the other three associations which represent members of AGS.

⁷⁴ Within the Office of the Attorney General <http://www.attorneygeneral.ie/pc/pc.html>

⁷⁵ <https://gra.ie/gra-press-statement-26092017/>

⁷⁶ <https://gra.ie/gra-press-statement-26092017/>

⁷⁷ Potentially serious industrial dispute between associations representing members of AGS and the Irish Government which was temporarily resolved in November 2016.

⁷⁸ DBEI (2018) Regulatory Impact Analysis for *Industrial Relations (Amendment) Bill 2018*, Pp. 3

⁷⁹ <https://gra.ie/gra-press-statement-26092017/>

⁸⁰ First report of the Working Group on Industrial Relations Structures for Members of AGS (2017), Pp. 13-20

⁸¹ <https://gra.ie/gra-press-statement-26092017/>

Principal Provisions

The *Industrial Relations (Amendment) Bill* is a short Bill comprising five sections. Section 1 of the Bill provides that in this Bill ‘the *Act of 1990*’ means the *Industrial Relations Act 1990* (i.e. the Principal Act). The Bill proposes to amend the *Industrial Relations Act 1990* in three ways:

- By amending definitions;
- By allowing members of AGS to access industrial relations mechanisms, and,
- By inserting a sixth schedule to the *Act of 1990*.

Amending Definitions

Section 2 of the Bill proposes to insert four definitions in section 3 of the *Act of 1990* relating to AGS; specifically the terms ‘Garda Commissioner’ and ‘Garda Síochána’ will have the **same** meaning as they do in the *Garda Síochána Act 2005*:

- ‘Act of 2005’ means the *Garda Síochána Act 2005*
- ‘Garda Commissioner’ means the Commissioner of the Garda Síochána;
- ‘Garda Síochána’ means the police force as referred to in the *Act of 2005*;
- ‘Member’ of the Garda Síochána has the same meaning as that used in the *Act of 2005*, which is ‘a member of any rank’ (and includes the Garda Commissioner or a reserve member (but does not include civilian staff). However, for the purpose of this Bill, Garda Commissioner and reserve members are specifically excluded.

A member of the Garda Síochána ‘reserve’

A ‘reserve’ refers to a reserve member of the Garda Síochána. Section 15 (2) of the *Act of 2005* states that “a person is not eligible to be appointed as a reserve member unless he or she has completed the prescribed training.” Once training has been completed a reserve member has, according to section 15 (3) “while on duty, the same powers, immunities, privileges and duties as a person appointed to the rank of garda.”⁸² However, section 15 (6) identifies a reserve member is a volunteer who does not perform his/her functions as a member under a contract of employment. Therefore Section 2 of the Bill will insert definitions which only to full members of the force and will not apply to reserves or to civilian staff.

Allowing for access to industrial relations mechanisms

Section 23 (1) of the *Act of 1990* is amended by Section 3(a) of the Bill which proposes to insert a reference to “a member of the Garda Síochána” into the definition of “worker”.

Section 3(b) of the Bill proposes to insert four new sub-sections (1A) – (1D) into section 23 of the *Act of 1990*. Subsection (1A) provides for the provisions of the Industrial Relations Acts 1946-2018 to apply to members of the Garda Síochána subject to certain exceptions.

⁸² <http://www.irishstatutebook.ie/eli/2005/act/20/section/15/enacted/en/html>

Subsection (1B) provides clarification on a number of definitions within the *Act of 2005*. These are set out in Table 3 below:

Table 3: Definitions

A reference to...	Shall be read as a reference to...
An employer	The Garda Commissioner
A contract of employment/contract with an employer/employment contract/any similar term	Any enactment, Garda code, instrument, decision, circular, instruction, any other document or any combination of the above as they relate to the terms and conditions of service of a member of the AGS
A trade union	A Garda representative association established in accordance with section 18 of the 2005 Act
An employer organisation or an employer association	The Garda Commissioner
A trade dispute	Any dispute or difference between members or retired members of AGS and the Garda Commissioner; relating to terms and conditions of service or to appointments/non-appointments of members. ⁸³

Sub - section (1C)(a) provides that nothing in the previous subsections will affect the operation of *section 18(3) of the Act of 2005* which states that “*a member of the Garda Síochána shall not be or become a member of any trade union or association (other than ... a Garda representative association) any object of which is to control or influence the pay, pensions or conditions of service of the Garda Síochána.*”⁸⁴

Subsection (1C)(b) provides that the changes proposed in section 3 of the Bill will not have the effect of applying the *Trade Union Acts 1871 to 1990* to members of AGS. Nor will the subsections apply in respect of the interpretation of any terms used in the *Trade Union Acts 1871 to 1990*.

Finally, subsection (1D) provides that the Acts listed in the Sixth schedule to the 1990 Act will not apply (either in part or as a whole) to a ‘worker’, where that worker is a member of the Garda Síochána. The Acts listed in this schedule are not relevant to providing members of AGS with access to the State’s industrial relations mechanisms.

Sixth Schedule to the Act of 1990

Section 4(1) of the Bill proposes to amend the Act of 1990 by inserting a new schedule listing the Acts (some in their entirety and others by part or section) to which section 23 (1A) and 23 (1B) of

⁸³ Without prejudice to [s. 3 of Industrial Relations Act 1946](http://www.irishstatutebook.ie/eli/1946/act/26/section/3/enacted/en/html#sec3)
<http://www.irishstatutebook.ie/eli/1946/act/26/section/3/enacted/en/html#sec3>

⁸⁴ <http://www.irishstatutebook.ie/eli/2005/act/20/section/18/enacted/en/html#sec18>

the *Act of 1990* will not apply. (Access the full schedule [here](#).⁸⁵) The Regulatory Impact Analysis (RIA) of the Bill states that the schedule proposed in section 4 (1) of the Bill:

[S]eeks to actively disapply certain provisions of industrial relations legislation, particularly those around legitimately engaging in strike action, provisions on trade union legislation and provisions on the right to collectively bargain under sectoral employment instruments such as under Employment Regulation Orders, Sectoral Employment Orders, etc.⁸⁶

Section 5 of the Bill provides a short title; this Act may be cited as the *Industrial Relations (Amendment) Act 2018*.

⁸⁵ <https://data.oireachtas.ie/ie/oireachtas/bill/2018/89/eng/initiated/b8918d.pdf> Pp.5

⁸⁶ Department of Business, Enterprise and Innovation (2018) Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

Cost & Implications if enacted

The [Regulatory Impact Analysis \(RIA\)](#) provides an assessment of the potential effect of this legislation under three headings⁸⁷:

- Costs;
- Benefits, and
- Impacts.

Costs associated with the legislation

The Department estimates that there will be “*resource implications*” for the WRC, the LC and possibly AGS.⁸⁸ However, it states that the resources required are “*not quantifiable until the work of the cross departmental group is completed.*”⁸⁹ The RIA provides an estimate (which the Department deems ‘conservative’) of 1,500 additional claims, which would constitute a 10% increase on current levels, when these institutions are made available to AGS, upon commencement of the Bill. The RIA also states that an application for additional funding (e.g. for personnel) will be made to the Department of Public Expenditure and Reform (DPER) to be included in costings for Budget 2019:

*“The question of additional resources relating to access by An Garda Síochána to the services of the WRC/Labour Court will be the subject of a separate application to the Department of Public Expenditure and Reform in the context of the overall estimates process 2019.”*⁹⁰

In other words, it is envisaged that the costs associated with enactment of the Bill will require additional financial resourcing.

Benefits associated with the legislation

The RIA states that the commencement of the Bill will deliver on the Government’s commitment to allow members of AGS access to the WRC and LC. This access should go some way to mitigating the risk of escalating industrial disputes and the threat of strike action within AGS, as evidenced in November 2016⁹¹.

Impact of the Legislation

The RIA suggests that the impact of the legislation will be felt by members of AGS who will have a legal entitlement to access industrial relations mechanisms for the first time. This will allow them to avail of the apparatus available to other categories of workers in order to resolve disputes

⁸⁷ <https://dbei.gov.ie/en/Legislation/Legislation-Files/RIA-Industrial-Relations-Amendment-Bill-2018.pdf>

⁸⁸ Department of Business, Enterprise and Innovation, Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

⁸⁹ Department of Business, Enterprise and Innovation, Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

⁹⁰ Department of Business, Enterprise and Innovation (2018), Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

⁹¹ Potentially serious industrial dispute between associations representing members of AGS and the Irish Government, which was temporarily resolved in November 2016.

unsuccessfully mediated at local level. According to the RIA, no other impacts are envisaged as a result of the enactment of the legislation.

Table 4: Summary of Regulatory Impact Analysis for *Industrial Relations (Amendment) Bill*

Bill	Department Analysis
Benefits	<ul style="list-style-type: none"> ✓ The commitment to publish legislation will be “<i>honoured</i>”⁹²; ✓ Disputes between members of AGS and management may be resolved as members of AGS will have access to the State’s IR mechanisms for the first time; ✓ The “<i>safety and security of the State</i>” will be ensured.
Costs	<ul style="list-style-type: none"> ✓ “<i>Resource implications</i>”⁹³ will arise for the WRC, the LC and possibly AGS; ✓ Anticipate 1,500 additional claims (10% increase) for WRC/LC⁹⁴ ✓ Application to DPER for increased funding in Budget 2019
Impact	<ul style="list-style-type: none"> ✓ For the first time, members of AGS will have a legal entitlement to access IR mechanisms available to other workers ✓ Other impacts: “<i>None envisaged.</i>”⁹⁵

At the beginning of 2017 the WRC had 903 employment rights/industrial relations complaints awaiting hearings, which had been reduced to 5 by the end of the year.⁹⁶ In 2017 a total of 382 industrial relations complaints were referred to the LC; of these 316 were completed.⁹⁷ Some 154 of the cases to the LC were referrals from the WRC. This equates to 1,285 referred complaints in total in 2017⁹⁸ The RIA anticipates a 10% increase or 1500 additional claims will be made by members of AGS to the WRC and the LC once the Act is commenced. Based on these figures both institutions are therefore likely to see modest but noteworthy increases going forward.

In Conclusion

Once enacted, the *Industrial Relations (Amendment) Bill 2018* will provide members of AGS (excluding the Garda Commissioner and members of the reserves), with the same rights as other workers to access the State’s industrial relations mechanisms. Members of AGS will be entitled to avail of the mediation, conciliation, facilitation and advisory services provided by the WRC and the recommendations issued by the LC in relation to issues such as hours of work, pensions and national pay agreements.

⁹² Department of Business, Enterprise and Innovation (2018), Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

⁹³ Department of Business, Enterprise and Innovation (2018), Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 3

⁹⁴ A ‘conservative estimate’ according to the RIA

⁹⁵ Department of Business, Enterprise and Innovation (2018), Regulatory Impact Assessment of the *Industrial Relations (Amendment) Bill 2018*, Pp. 4

⁹⁶ Workplace Relations Commission Annual Report 2017, Pp. 26

http://www.workplacerelations.ie/en/Publications_Forms/Workplace_Relations_Commission_-_Annual_Report_2017.pdf

⁹⁷ Labour Court Annual Report 2017 Pp. 18 (Sourced 08 August 2018)

http://www.workplacerelations.ie/en/Publications_Forms/Labour_Court_Annual_Report_-_2017_English_.pdf

⁹⁸ Includes all complaints including those not completed and the 154 complaints referred from the WRC to the LC are counted twice.

Access to this infrastructure will only be granted to members of AGS once all internal dispute resolution mechanisms have been exhausted. Currently, this includes the Conciliation and Arbitration (C & A) Scheme and will grow to include permanent dispute resolution mechanisms including those put forward by the *Working Group on Industrial Relations Mechanisms for An Garda Síochána* (second report not yet published). The prohibitions on members of AGS to form or join trade unions or to engage in industrial strike action remain unchanged by this legislation.



Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie
Tel: +353 (0)1 6183000 or 076 1001700
Twitter: @OireachtasNews

Library & Research Service
<http://library>
Tel: +353 (0)1 6184701
Email: library.and.research@oireachtas.ie

Connect with us

