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**Bille an Gharda Síochána (Cumhachtaí), 2026**  
**Garda Síochána (Powers) Bill 2026**

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*Mar a tionscnaíodh*

*As initiated*

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**GARDA SÍOCHÁNA (POWERS) BILL 2026**

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**BILLE AN GHARDA SÍOCHÁNA (CUMHACHTAÍ), 2026**  
**GARDA SÍOCHÁNA (POWERS) BILL 2026**

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# **Bill**

*entitled*

An Act to make provision in relation to the power of members of An Garda Síochána to stop and search persons and vehicles in specified circumstances; to make provision in relation to the search of premises; to make provision in relation to the treatment of persons in custody; to give further effect to Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013<sup>1</sup> on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities when deprived of liberty; to amend the Criminal Law Act 1976, the Criminal Justice (Miscellaneous Provisions) Act 1997 and the Criminal Justice Act 2007; and to provide for related matters.

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**Be it enacted by the Oireachtas as follows:**

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## **PART 1**

### **PRELIMINARY AND GENERAL**

#### **Short title and commencement**

1. (1) This Act may be cited as the Garda Síochána (Powers) Act 2026.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

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#### **Interpretation**

2. (1) In this Act—
  - “capture” means, in relation to data contained in, or accessible from, an electronic device or information system, one or more of the following:
    - (a) the seizing and taking control of the data;

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“capture” means, in relation to data contained in, or accessible from, an electronic device or information system, one or more of the following:

- (a) the seizing and taking control of the data;

1 O.J. No. L294, 6.11.2013, p. 1

(b) the performing of such operation on the data so as to ensure that the data remain in the form they were in at the time of the capture and cannot be altered;

(c) the downloading of the data and the making and retaining of a copy of the data;

“child” means a person who has not attained the age of 18 years;

“Commissioner” means the Commissioner of An Garda Síochána;

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“computer” means any device that can accept digital information or data that is then processed, manipulated or transmitted by means of a programme, software or sequence of instructions that it contains or that are input into it;

“data” means, in relation to an electronic device or information system, any representation of facts, information or concepts in a form capable of being processed in the electronic device or information system, and includes—

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(a) information about that data, and

(b) a programme capable of causing the electronic device or information system to perform a function;

“digital forensic examination” means, in relation to an electronic device or information system, the examination of the electronic device or information system and of the data contained in, or accessible from, the device or system, that utilises digital tools, scientific methods and processes to acquire, examine and process the device or system and to report on the data;

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“driver” means, in relation to a vehicle, the person who for the time being is in control of the vehicle;

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“electronic device” means any device that may be used to create, store, record, access or transmit data or other information in digital form and includes a computer, mobile telephone, recording medium and software;

“Garda custody facility” means a Garda Síochána station or other place at which a person may be held while in the custody of An Garda Síochána;

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“information system” means—

(a) a device or group of interconnected or related devices, one or more than one of which performs automatic processing of data pursuant to a programme, and

(b) data stored, processed, retrieved or transmitted by such device or group of devices for the purposes of the operation, use, protection or maintenance of the device or group of devices, as the case may be,

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and a reference in this Act to an information system includes a reference to a part of the system;

“member” means a member of An Garda Síochána;

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“Minister” means the Minister for Justice, Home Affairs and Migration;

“prescribed” means prescribed by regulations made by the Minister;

“privilege screening”—

- (a) in relation to material other than material referred to in *paragraph (b)*, means a review of the material for the purpose of ascertaining whether it contains privileged material, and
- (b) in relation to data contained in, or accessible from, an electronic device or information system, means a review of the data for the purpose of ascertaining whether the data contains privileged material;

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“privileged material” shall be construed in accordance with *subsection (2)*;

“public place” includes—

- (a) any highway,
- (b) any outdoor area to which at the material time members of the public have or are permitted to have access, whether as of right or as a trespasser or otherwise, and which is used for public recreational purposes,
- (c) any cemetery or churchyard,
- (d) any premises or other place to which at the material time members of the public have or are permitted to have access, whether as of right or by express or implied permission, or whether on payment or otherwise, and
- (e) any vehicle used for the carriage of persons for reward;

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“recording medium” means any medium on which an electronic recording may be made or copied, and includes a magnetic tape, CD, DVD and an online storage device;

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“seize” means, in relation to an electronic device or information system, the taking of the device or system into the possession of the person seizing it;

“vehicle” means any conveyance, or part of a conveyance, in or by which any person or thing, or both, is or are, as the case may be, transported which is designed for use on land, in water or in the air, or in more than one of those ways, and includes—

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- (a) a road or rail vehicle, whether mechanically propelled or not,
- (b) a vessel, whether sea-going or not,
- (c) an aircraft, whether capable of operation or not,
- (d) a hovercraft,
- (e) an unmanned aerial vehicle,
- (f) an article designed as a vehicle but not capable of functioning as a vehicle, and
- (g) a container, trailer, tank or any other thing which is or may be used for the storage of goods in the course of carriage and is designed or constructed to be placed on, in, or attached to, a conveyance.

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(2) A reference in this Act to material being privileged shall be construed as a reference to the material being, by or under any enactment or rule of law—

- (a) the subject of legal professional privilege, or

(b) the subject of privilege, other than legal professional privilege, where, under the enactment or rule of law concerned, the holder of the material is obliged to disclose it to another person only where a court has directed such disclosure (in this Act referred to as “*section 2(2)(b) privilege*”).

**Repeal and transitional provision**

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3. (1) Subject to *subsection (2)*, section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 is repealed.

(2) This section shall not affect the validity of a warrant issued under section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 before the commencement of this section and such a warrant shall continue in force in accordance with its terms after such commencement.

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**Saver**

4. The functions conferred on a member of An Garda Síochána by this Act are in addition to, and not in substitution for, any functions conferred on such a member under any other enactment or a rule of law.

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**Orders and regulations**

5. (1) The Minister may make regulations for the purpose of enabling any provision of this Act to have full effect.

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

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(3) Every order (other than an order under *section 1(2)*) and regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

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**Expenses**

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, be paid out of moneys provided by the Oireachtas.

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**PART 2**

**STOP AND SEARCH**

**Definitions (Part 2)**

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7. In this Part—

“means of access” means, in relation to a vehicle, such means as are necessary to enable access to the vehicle and includes an access card, code, fob, key and software application (commonly known as an “app”);

“relevant article” means any of the following:

- (a) anything stolen or obtained unlawfully; 5
- (b) explosive material, the possession of which is in contravention of the Explosives Act 1875;
- (c) a controlled drug (within the meaning of section 2 of the Misuse of Drugs Act 1977), the possession of which is in contravention of the Misuse of Drugs Act 1977; 10
- (d) a firearm or ammunition, the possession of which is in contravention of the Firearms Act 1925;
- (e) in a public place, any article the possession of which is in contravention of section 9 or 9A of the Firearms and Offensive Weapons Act 1990;
- (f) in a public place, a syringe, or any blood in a container intended by the person concerned unlawfully to cause or to threaten to cause injury to or to intimidate another; 15
- (g) any of the following, where used by the person in possession of it, or intended by the person for use, in the commission of an offence:
  - (i) a computer programme; 20
  - (ii) a device, computer password, encryption key or code, or access code, or similar data, by which an information system is capable of being accessed;
- (h) any article used by the person in possession of it, or intended by the person for use, in the commission of an offence, if possession of that article in such circumstances constitutes an offence. 25

### **Power to require provision of information**

8. A member who has reasonable grounds to suspect that a person—

- (a) has committed, or is committing, an offence, or
- (b) is in possession of a relevant article,

may require the person to provide his or her name, address and date of birth to the member. 30

### **Power to stop and search for possession of relevant article**

9. Where a member who is in—

- (a) a public place, or
- (b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be, 35

has reasonable grounds to suspect that a person is in possession of a relevant article, the member may without warrant do either or both of the following:

- (i) stop and search the person, or cause the person to be stopped and searched and, if the member considers it necessary for that purpose, detain the person, or cause the person to be detained, for such time as is reasonably necessary for carrying out the search;
- (ii) stop and search, or cause to be stopped and searched, any vehicle in which the member suspects the relevant article may be found and, for the purpose of carrying out the search may, if the member thinks fit, require the driver to bring it to a stop and when stopped to refrain from moving it, or in case such vehicle is already stationary, to refrain from moving it.

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#### **Power to search vehicles and persons in vehicles for evidence of offence**

**10.** (1) This section applies where a member who is in—

- (a) a public place, or
- (b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

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has reasonable grounds to suspect that an offence specified in *Schedule 1* has been, is being or is about to be committed.

(2) Where this section applies, the member concerned may require a person to stop a vehicle for the purposes of enabling the member to ascertain whether—

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- (a) any person in or accompanying the vehicle has committed, is committing or is about to commit the offence, or
- (b) evidence relating to the commission or intended commission of the offence by any person is in or on the vehicle or on any person in or accompanying it.

(3) A member who, under *subsection (2)*, requires a person to stop a vehicle, may do either or both of the following:

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- (a) search the vehicle;
- (b) where the member suspects with reasonable grounds that *paragraph (a)* or *(b)* of *subsection (2)* applies, search any person in, on or accompanying the vehicle.

(4) A reference in *subsection (1)* to an offence includes a reference to an attempt or conspiracy to commit the offence.

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#### **Search under section 9 or 10: additional provisions**

**11.** (1) Where a member decides to search a person under *section 9* or *10*, the member may require the person to accompany him or her to a Garda custody facility for the purpose of being so searched at that facility.

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(2) Where a member decides to search a vehicle under *section 9* or *10*, the member may do one or more of the following:

- (a) require the driver, and any other person in, on or accompanying the vehicle, not to remove from the vehicle any substance, article or other thing in advance of the commencement, and for the duration, of the search, other than with the express permission of the member;
- (b) where the place at which the member finds the vehicle is, in the member's reasonable opinion, unsuitable for such search, take the vehicle or cause it to be taken or require the driver forthwith to take the vehicle to a specified place which the member considers suitable for such search;
- (c) require the driver to be in or on or to accompany the vehicle, as may be appropriate, for so long as is necessary to complete the search;
- (d) require the driver to provide the member with such means of access to the vehicle as is necessary for the purposes of the search.

(3) Where a requirement under *paragraph (a)* of *subsection (2)* is made of a person, the search in relation to which the requirement is made shall be carried out as soon as practicable.

(4) A person of whom a requirement under *paragraph (c)* of *subsection (2)* is made shall, for the purposes of *section 15*, be considered to have failed to comply with that requirement where he or she, at any time while the requirement is in force, is not in, on or accompanying the vehicle in relation to which the requirement was made.

**Right to be informed of reason for search under *section 9 or 10***

12. A member, before carrying out a search under *section 9 or 10* of a person or a vehicle, shall, as soon as practicable, inform or cause to be informed, in simple and accessible language, the person or, as the case may be, the driver of the vehicle or, where applicable, both, of the following:

- (a) that he or she, or the vehicle of which he or she is the driver, as the case may be, is about to be searched;
- (b) the reason or reasons for the search;
- (c) the provision of this Part under which the search is being carried out.

**Record to be made of search under *section 9 or 10***

13. (1) A member who carries out a search under *section 9 or 10* of a person or a vehicle shall, in accordance with this section, make a record of the search.

(2) A record made under *subsection (1)* shall contain the following information:

- (a) where known, the name, address and date of birth of the person or, as the case may be, the driver of the vehicle concerned;
- (b) the time and date of the search;
- (c) the reason or reasons for the search;
- (d) the provision of this Part under which the search was conducted;

- (e) the outcome of the search including, where a search results in the seizure of a relevant article or evidence relating to the commission of an offence, the article or evidence concerned.
- (3) The person or driver who is the subject of a search referred to in *subsection (1)* may, at any time, make a request in writing to a superintendent of An Garda Síochána in the Garda Síochána district in which the search was carried out for a copy of the record. 5
- (4) A superintendent of An Garda Síochána who receives a request made in accordance with *subsection (3)* shall, as soon as practicable, provide or cause to be provided a copy of the record to the person or driver concerned.

### Use of reasonable force (*Part 2*)

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14. Subject to this section, when acting in the course of his or her duty under any provision of this Part, a member may use such force as is reasonably necessary—

- (a) in order to compel a person to comply with a requirement to stop a vehicle, and such force may include the placing of a barrier or other thing in the path of vehicles, or 15
- (b) in order to enter a vehicle, or to open or inspect any container where such entry, opening or inspection is authorised by any provision of this Part.

### Offences (*Part 2*)

15. A person who—

- (a) in relation to a requirement under *section 8*, gives a name, address or date of birth which is false or misleading in a material respect, 20
- (b) obstructs or attempts to obstruct any member acting under powers conferred by this Part, or
- (c) fails to comply with a requirement of a member acting under powers conferred by this Part, 25

shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or to both, or
- (ii) on conviction on indictment, to a fine not exceeding €30,000 or to imprisonment for a term not exceeding 5 years, or to both. 30

## PART 3

### SEARCH OF PREMISES

#### Definitions (*Part 3*)

16. In this Part—

“application” means an application made in accordance with *section 17* for a search 35

warrant, and “applicant” shall be construed accordingly;

“authorised member”, in relation to a search warrant, means the applicant for the search warrant;

“place” means a physical location and includes—

(a) a dwelling, residence, building or abode,

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(b) a vehicle, and

(c) any land, and any building, structure or any other thing constructed, erected, placed or made on, in or under any land;

“place of search” has the meaning assigned to it in *section 18(1)*;

“proposed place of search” has the meaning assigned to it in *section 17(1)*;

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“search warrant” means a search warrant issued under *section 18*.

### Application for search warrant

17. (1) A member may make an application for a search warrant to a judge of the District Court where the member believes that there are reasonable grounds for suspecting that evidence of or relating to the commission of—

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(a) an offence specified in *Schedule 2*, whether summary or indictable, or

(b) any other indictable offence,

may be found at a particular place (in this Part referred to as the “proposed place of search”).

(2) An application shall be in such form, and made in such manner, as may be prescribed and shall include the following information on oath—

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(a) a statement of the grounds referred to in *subsection (1)* on which the application is made,

(b) the address or location of the proposed place of search,

(c) where applicable, a statement of the information referred to in *subsection (4)* or (5) or *section 20*, as the case may be, and

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(d) any other information known to the applicant that he or she considers may affect the granting of the application.

(3) Subject to *subsection (4)*, an application may include a request that the search warrant authorise the applicant, in relation to an electronic device or information system, to do one or more of the acts referred to in *paragraph (a) to (f)* of *section 19(1)*.

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(4) A request referred to in *subsection (3)* for an authorisation referred to in *paragraph (d)* or (e) of *section 19(1)* shall be accompanied by a statement on oath of the grounds for suspecting that evidence referred to in *subsection (1)* may be contained in, or accessible from, the electronic device or information system concerned.

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(5) Where an applicant suspects that privileged material may be present at the proposed place of search, or contained in, or accessible from, any electronic device or

information system that may be present at that place, his or her application shall include such information as is known to him or her relating to—

- (a) the nature of the privileged material concerned, and
- (b) any other matter relating to the privileged material that the applicant considers relevant to the issuing of the search warrant.

(6) A judge of the District Court hearing an application may require the applicant to provide the Court with such further information as it considers necessary in order to determine the application.

(7) A record shall be made of the hearing of an application.

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**Issue of search warrant: general provisions**

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18. (1) A judge of the District Court (in this section referred to as the “issuing judge”) may, on an application, issue a search warrant for the search of a specified place (in this Act referred to as the “place of search”), if satisfied by information provided by the applicant in the application that—

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- (a) there are reasonable grounds for suspecting that evidence of or relating to the commission of an indictable offence or a summary offence specified in the application may be found at the place, and
- (b) the issuing of the search warrant is necessary and proportionate.

(2) A search warrant shall be in such form as may be prescribed and shall be expressed to and shall operate to authorise the authorised member, accompanied by such member or members of An Garda Síochána or other persons, or both, as he or she considers necessary—

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- (a) to enter, at any reasonable time or times, the place of search,
- (b) to search the place of search,
- (c) to search any person present at the place of search,
- (d) to require any person present at the place of search to give to the authorised member his or her name and address,
- (e) to request assistance from any person present at the place of search so as to gain access to material sought under the search warrant,
- (f) to require any person present at the place of search to provide to the authorised member any books, documents or records which are in that person’s power or control, where the books, documents or records concerned are accessible from the place,
- (g) subject to *subsection (5)*, to seize any material found at the place of search or in the possession of a person present at that place at the time of the search which the authorised member reasonably believes to be evidence of, or relating to, the commission of an offence,
- (h) to make and retain a copy of any book, document or record seized, and
- (i) to use reasonable force, where necessary for the execution of the warrant.

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(3) Subject to anything provided for in a search warrant, a power under a search warrant may be exercised at any time during the period of validity of the warrant.

(4) Subject to *section 26*, the period of validity of a search warrant shall be—

(a) where the warrant is issued in respect of an offence under the Misuse of Drugs Act 1977, 30 days from its date of issue, and 5

(b) in any other case, 7 days from its date of issue.

(5) Without prejudice to *section 19*, an authorisation under *subsection (2)(g)* shall, in respect of the seizure of an electronic device or information system, be exercisable subject to the condition that data contained in, or accessible from, the device or system, may be accessed only pursuant to an authorisation under *section 29*. 10

#### Search of electronic device or information system under search warrant

19. (1) Subject to *subsection (2)*, a search warrant may be expressed, and operate, to authorise the authorised member, in addition to exercising any power specified in *sections 18 or 20*, to do such of the following as the issuing judge considers necessary and proportionate having regard to the information provided to him or her by the applicant under *section 17*: 15

(a) to seize an electronic device or information system found at the place of search or in the possession of a person present at that place at the time of the search for the purpose of exercising any power referred to in *paragraphs (b) to (f)*; 20

(b) to operate any electronic device or information system found at the place of search or cause any such device or system to be operated by a person accompanying the authorised member, including by the use of any password, pin code or other code, biometric data or other information found in the course of the search; 25

(c) to capture the data contained in or accessible from an electronic device or information system (whether seized or not) found at the place of search or in the possession of any person present at the place at the time of the search which the authorised member reasonably believes to be or to contain evidence of, or relating to, the commission of an offence; 30

(d) to conduct a privilege screening of the data (whether captured or not) contained in or accessible from an electronic device or information system (whether seized or not) found at the place of search; 35

(e) to conduct a digital forensic examination of the data (whether captured or not) contained in or accessible from an electronic device or information system (whether seized or not) found at the place of search; 40

(f) to require any person who appears to the authorised member to have access to or to have under his power or control the information held in any electronic device or information system (whether seized or not) or that can be accessed by the use of that electronic device or information system to do one or more of the following:

- (i) to give to him or her any passwords, pin codes or other codes, biometric data or any other information necessary to access the electronic device or information system;
- (ii) to otherwise enable him or her to examine the information contained in, or accessible from, the electronic device or information system in a form in which the information is visible and legible; 5
- (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

(2) An authorisation referred to in *paragraph (c)* of *subsection (1)* may be expressed to be exercisable subject to the condition that a privilege screening or digital forensic examination of the data concerned, or of such of the data as is specified in the warrant, may be conducted only pursuant to an authorisation under *section 29*. 10

(3) Where—

- (a) in the exercise of a power under a search warrant, an electronic device or information system is found at the place of search or in the possession of a person present at the place at the time of the search, 15
- (b) the authorised member reasonably believes that evidence of, or relating to, the commission of an offence is contained in, or accessible from, the device or system, and
- (c) the application for the search warrant did not include a request under *subsection (3)*, or a statement under *subsection (4)*, of *section 17* in respect of the device or system, as the authorised member did not, at the time of making the application for the search warrant, suspect that *paragraph (b)* would apply, 20

the search warrant shall operate to authorise the authorised member to—

- (i) seize the electronic device or information system, and 25
- (ii) capture (if necessary, by doing anything referred to in *paragraph (b)* or *(f)* of *subsection (1)*) the data contained in or accessible from the device or system,

subject to the condition that a privilege screening or digital forensic examination of the data concerned may be conducted only pursuant to an authorisation under *section 29*. 30

**Search warrant may authorise examination of material subject to *section 2(2)(b)* privilege in certain circumstances**

20. (1) An applicant may include in an application a request that the search warrant, in relation to material that is, or may be, the subject of *section 2(2)(b)* privilege, authorise the seizure or capture, or both, and the conduct of an examination, of such of the material as may be specified in the application, where such seizure and examination is necessary for the purpose of protecting the life or personal safety of a person or persons, or protecting critical infrastructure, or both. 35

(2) A request referred to in *subsection (1)* shall be accompanied by a statement on oath of the grounds for believing that— 40

- (a) there is a serious risk to the life or personal safety of the person or persons, or to critical infrastructure, or both, and
- (b) such seizure or capture, or both, and examination is necessary for the purpose of protecting the life or personal safety of the person or persons, or protecting the critical infrastructure, or both.

(3) A search warrant may be expressed to and operate to authorise the authorised member, in addition to exercising any other power specified in *sections 18 or 19*, to seize or capture, or both, and conduct an examination of, such material that is, or may be, the subject of *section 2(2)(b)* privilege as may be specified in the search warrant, where the issuing judge is satisfied, on a request referred to in *subsection (1)*, that—

- (a) there is a serious risk to the life or personal safety of the person or persons, or to the critical infrastructure, or both, to which the request relates, and
- (b) such seizure or capture, or both, and examination is necessary and proportionate for the purpose of protecting the person, persons or infrastructure from that risk.

(4) A reference in this section to the conduct of an examination of material is, in the case of material that was contained in, or accessible from, an electronic device or information system and that has, pursuant to the search warrant concerned, been captured, a reference to the conduct of a digital forensic examination of the material.

#### **Right to be informed of search pursuant to search warrant**

21. (1) Subject to this section, an authorised member shall, in advance of entering a place of search pursuant to a search warrant, or as soon as practicable thereafter, and prior to the commencement of a search pursuant to a search warrant—

- (a) show to the occupier, or person in control, of the place of search who is present at that place a copy of the search warrant, and
- (b) provide to the person referred to in *paragraph (a)* a notice in writing informing him or her, in simple and accessible language, of the following:

- (i) the powers that may be exercised under the authority of the search warrant;
- (ii) the rights and obligations of the occupier and owner of any property seized, including the effect of *sections 22 and 23*;
- (iii) the procedure for seizing material pursuant to the search warrant;
- (iv) that reasonable force may be used, if necessary, during the course of the execution of the warrant; and
- (v) the procedure under *sections 24 and 25*.

(2) The occupier, or person in control, of the place of search, may, where a copy of the search warrant is not shown, or the notice is not provided, to him or her in accordance with *paragraph (a)* or *(b)*, as the case may be, of *subsection (1)*, within 7 days of the search, make a request to a superintendent of An Garda Síochána in the Garda Síochána district in which the place of search is situated, for a copy of the notice, or to view a copy of the warrant, or both.

(3) A superintendent of An Garda Síochána who receives a request made in accordance with *subsection (2)* shall, as soon as practicable, comply with the request or cause it to be complied with.

(4) Where, by reason of the occupier or person in control of the place of search not being present at the place, or refusing to accept the search warrant or notice, as the case may be, the authorised member is not able to comply with *paragraph (a)* or *(b)* of *subsection (1)*—

(a) the authorised member shall leave a notification at the place advising the occupier or person to contact a superintendent of An Garda Síochána in the Garda Síochána district in which the place of search is situated, and

(b) a superintendent of An Garda Síochána, where contacted by the occupier or person in response to a notification under *paragraph (a)*, shall inform him or her, or cause him or her to be informed, of his or her entitlement under *subsection (2)*.

(5) An authorised member shall not be considered to have failed to comply with this section, *section 22* or *section 23* by virtue only of—

(a) a clerical error in any document issued by him or her under the provisions concerned, or

(b) an error arising from an accidental omission.

### **Exercise of powers under search warrant**

**22.** (1) Where—

(a) an authorised member finds anything at the place of search, or in the custody or possession of any person found at that place, that the authorised member has reasonable grounds for believing may be, or may contain, seizable material, and

(b) it is not reasonably practicable for a determination to be made at the place as to—

(i) whether what he or she has found is seizable material, or

(ii) the extent to which what he or she has found contains material that is seizable material,

the power of seizure of the authorised member under the warrant shall include the power to seize so much of what he or she has found as it is necessary to remove from the place of search to enable such determination to be made.

(2) Where—

(a) an authorised member finds material at a place of search, or in the custody or possession of any person found at that place, which would be seizable material but for its being comprised in something else that he or she has (apart from this subsection) no power to seize, and

(b) it is not reasonably practicable for the seizable material to be separated, at that place, from that in which it is comprised,

the power of seizure of the authorised member under the warrant shall include power to seize both the seizable material and that from which it is not reasonably practicable to separate it.

- (3) Where a member, in accordance with *section 18(2)*, accompanies an authorised member, the member may search any persons present at the place of search.
- (4) In this section, “seizable material” means material that the authorised member is entitled, under the search warrant concerned, to seize.

**Treatment of material seized under search warrant**

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23. (1) An authorised member who, in exercise of a power under a search warrant, seizes material, shall ensure that following its removal from the place of search the material is stored and a record is made of the material.

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- (2) Subject to *subsection (4)*, where material seized pursuant to a search warrant is no longer required for the purposes of criminal proceedings, the authorised member shall, without delay, cause the material to be returned to the person who disclosed the material concerned, or from whose possession the material was seized.

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- (3) Subject to *subsection (4)*, where data contained in or accessible from an electronic device or information system that is captured pursuant to a search warrant is no longer required for the purposes of criminal proceedings, the authorised member shall, without delay—

- (a) cause the material to be deleted, and
- (b) inform the person in whose possession the electronic device or information system concerned was at the time of search of the deletion.

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- (4) The authorised member shall not be required to comply with *subsection (2)* or *(3)(b)* where he or she considers that to do so would be likely to—
  - (a) prejudice a criminal investigation or criminal proceedings in the State, or
  - (b) jeopardise the safety of a person.

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**Determination as to privilege**

24. (1) This subsection applies where—

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- (a) material has been the subject of a privilege screening analysis or an examination (including a digital forensic examination),
- (b) it is considered that the material concerned may be privileged material, and
- (c) the authorised member wishes to have access to the material on the grounds that he or she considers that the material is evidence of or relating to the commission of an offence.

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- (2) Subject to this section, where *subsection (1)* applies—

- (a) the relevant person concerned may, and
- (b) the authorised member shall, other than where the relevant person concerned has, in accordance with this subsection, made such an application,

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within 14 days of the disclosure, seizure or capture, or the conclusion of the privilege screening, as the case may be, of the material, make an application to the Court for a determination under *subsection (6)* as to whether the material is privileged material.

(3) An authorised member may make an application under *subsection (2)* after the expiry of the period referred to in that subsection, where—

- (a) *subsection (1)* or *(2)* of *section 22* applied to the material concerned, and
- (b) the Court is satisfied that the application has been made without undue delay after the authorised member first considered that the material may include privileged material. 5

(4) An application under *subsection (2)* or *(6)* shall be made by motion on notice and may, if the Court directs, be heard otherwise than in public.

(5) Where an application is made under *subsection (2)*, the relevant person concerned shall, within such period as shall be prescribed, provide the authorised member concerned and the Court with a statement in writing containing such information as is reasonably required to enable the identification of the material that is, in the opinion of the relevant person, privileged material. 10

(6) Pending the making of a final determination on an application made under *subsection (2)*, the Court may, of its own motion or on application by the authorised member or the relevant person, give such interim or interlocutory directions as the Court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

- (a) the preservation of the material, in whole or in part, in a safe and secure place, in such manner as the Court may specify, and 15
- (b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—
  - (i) examining the material, and
  - (ii) preparing a report for the Court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the material is privileged material. 20

(7) The Court, on hearing an application made under *subsection (2)*—

- (a) shall make its determination as to whether the material concerned is privileged material, and 30
- (b) where the determination of the Court under *paragraph (a)* is that the material is the subject of *section 2(2)(b)* privilege, may direct that the authorised member is authorised to examine the material.

(8) Where the Court, under *subsection (7)(a)*, determines that material is privileged material and does not make a direction referred to in *paragraph (b)* of that subsection, the authorised member shall, without delay—

- (a) cause the material to be returned to the relevant person, or
- (b) where the material concerned is data contained in or accessible from an electronic device or information system that was captured in accordance with this 40

Part, pursuant to a search warrant, cause the material to be deleted, and inform the relevant person of the deletion.

(9) The Minister may by regulation provide for the requirements to be met by a person in order to be eligible for appointment under *subsection (6)(b)*.

(10) In this section and *section 25*—

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“authorised member” means, as applicable, the authorised member within the meaning of this Part or *section 29*;

“Court” means the High Court;

“relevant person” means, in the circumstances referred to in *subsection (1)*, as the case may be—

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(a) the person who discloses the material concerned, or from whose possession the material is seized, or

(b) in the case of data contained in or accessible from an electronic device or information system that has been captured in accordance with this Part, the person in whose possession the electronic device or information system concerned was at the time of search.

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#### **Agreement by parties as to privilege**

**25.** (1) The authorised member and relevant person may, at any time within the 14 day period referred to in *section 24(2)*, in writing—

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(a) undertake to consult, during such period (in this section referred to as the “suspensive period”) as is specified in the undertaking, with one another for the purpose of reaching an agreement under this section, and

(b) confirm the understanding of each of them of the effect of *subsection (2)*.

(2) Where an undertaking under *subsection (1)* is given—

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(a) neither party to the undertaking may, during the suspensive period, make an application under *section 24(2)*,

(b) any proceedings arising from the making of an application under that provision shall, for the duration of the suspensive period, stand suspended,

(c) either party may, before the expiry of the suspensive period, terminate the undertaking, and

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(d) where—

(i) the undertaking is terminated, or

(ii) the suspensive period specified in the undertaking expires,

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and the parties have not, by the date of such expiry, made an agreement under this section, *paragraphs (a) and (b)* shall cease to apply and, for the purposes of calculating the period referred to in *section 24(2)*, the period beginning on the date on which the undertaking is made and ending on the date on which *subparagraph (i)* or *(ii)*, as the case may be, occurs, shall not be reckonable.

(3) The authorised member and relevant person, where they have made an undertaking under *subsection (1)*, may make an agreement in writing—

- (a) specifying the material seized or disclosed that each of the parties to the agreement agrees is not privileged material,
- (b) specifying the material seized or disclosed in respect of which neither party asserts privilege, and
- (c) confirming the understanding of each of the parties to the agreement of the effect of *subsection (4)*.

(4) Where an agreement is made under *subsection (3)*, the following shall apply in respect of the material, referred to in *paragraph (a)* and *(b)* of that subsection, that is specified in the agreement:

- (a) the material shall be deemed, for the purpose of any criminal proceedings, not to be privileged material;
- (b) the relevant person—
  - (i) shall not make an application under *section 24(2)* in respect of the material, and
  - (ii) shall discontinue any proceedings arising out of such an application, insofar as those proceedings relate to the material;
- (c) the authorised member may, without the need for a determination under *section 24(7)* in respect of the material, proceed to examine the material;
- (d) the material may be retained and used in any criminal proceedings.

#### **Extension of period of validity of search warrant**

**26.** (1) Where a search warrant has been issued under this Part, the authorised member concerned may, during the period of validity of the search warrant, apply to a judge of the District Court for an order extending the period of validity of the warrant, and such application shall be in such form, and made in such manner, as may be prescribed and shall include a statement on oath of the grounds, by reference to the purpose for which the search warrant was issued, on which the authorised member considers the extension applied for to be necessary.

(2) Subject to *subsection (3)*, a judge of the District Court may, on an application made under *subsection (1)*, if satisfied that there are reasonable grounds for believing that further time is needed so that the purpose or purposes for which the search warrant was issued can be fulfilled, and that it is necessary and proportionate to do so, make an order extending the period of validity of the warrant by such period, not exceeding 7 days, as the judge considers appropriate and cause the search warrant to be endorsed accordingly.

(3) No more than 3 orders under *subsection (2)* may be made in respect of a particular search warrant.

(4) Nothing in this section shall operate to prevent a judge of the District Court from issuing, on a fresh application made to him or her under *section 17*, a further search warrant in relation to the same place of search.

(5) An application made under this section shall be heard otherwise than in public.

### **Application for authorisation in urgent circumstances**

**27.** (1) A member of An Garda Síochána may apply to a superior officer for an authorisation under this section, where the member believes that there are reasonable grounds for suspecting that evidence of or relating to the commission of—

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- (a) an offence specified in *Schedule 2*, whether summary or indictable, or
- (b) any other indictable offence,

may be found at a specified place.

(2) An application made under *subsection (1)* shall include—

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- (a) information relating to the grounds on which it is made, and
- (b) where the member applying for the authorisation is requesting authority to exercise any power specified in *section 19(1)*, a statement to that effect, which shall be accompanied by a statement of the grounds for suspecting that evidence referred to in *subsection (1)* may be contained in, or accessible from, an electronic device or information system that may be found at the specified place.

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(3) A superior officer may, on an application made under *subsection (1)*, issue an authorisation under this section, if he or she satisfied that—

- (a) there are reasonable grounds for suspecting that evidence of or relating to the commission of an indictable offence or a summary offence specified in the application may be found at the place specified in the application,
- (b) the issuing of the authorisation is necessary and proportionate for the proper investigation of the offence to which the application relates, and
- (c) the circumstances of urgency giving rise to the need for the immediate issue of the authorisation would render it impracticable for the member making the application under *subsection (1)* to apply to a judge of the District Court under *section 17* for the issue of a search warrant.

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(4) An authorisation under this section shall be in writing and expressed to and shall operate to provide the member who applied for it with the authority to exercise either or both of the following, as the superior officer may, in accordance with *subsection (3)*, specify:

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- (a) any power specified in *section 18(2)* in relation to the place specified in the authorisation;
- (b) any power specified in *section 19(1)*, subject to the condition that the member conduct a privilege screening or digital forensic examination of any data contained on the electronic device or information system only in accordance with an authorisation under *section 29*.

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(5) *Sections 21, 22, 23, 24 and 25* shall apply to an authorisation under this section as they apply to a search warrant under this Part, subject to the modification that a reference in those sections to an authorised member shall be construed as a reference

to the member who applied for the authorisation, and any other necessary modifications.

(6) The period of validity of an authorisation under this section shall be 24 hours.

(7) A superior officer may issue an authorisation under this section only if he or she is independent of the investigation of the offence in relation to which the application made under subsection (1) relates. 5

(8) A superior officer who issues an authorisation under this section shall, either at the time the authorisation is issued or as soon as reasonably practicable thereafter, record in writing the grounds on which the authorisation was issued, including how he or she was satisfied as to the matters referred to in subsection (3). 10

(9) In this section, “superior officer” means a member who is of a rank that is higher than that of the member applying for the authorisation and, in any case, not below the rank of superintendent.

(10) For the purposes of this section, a superior officer is independent of the investigation of the offence only where he or she is not, and has not been, in charge of, or involved in, the investigation. 15

### **Provision of information and obstruction (Part 3)**

**28.** (1) Where a member, when performing a function under any provision of this Part or acting under the authority of a search warrant, has reasonable grounds to suspect that a person has committed, or is committing, an offence, the member may require the person to provide his or her name, address and date of birth to the member. 20

(2) A person who—

(a) in relation to a reasonable requirement of a member performing a function under any provision of this Part, or acting under the authority of a search warrant, gives a name, address or date of birth which is false or misleading in a material respect, 25

(b) obstructs or attempts to obstruct any member performing a function under any provision of this Part, or acting under the authority of a search warrant, or

(c) fails to comply with a reasonable requirement of a member performing a function under any provision of this Part, or acting under the authority of a search warrant, shall be guilty of an offence and shall be liable— 30

(i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding €30,000 or imprisonment for a term not exceeding 5 years, or to both.

## PART 4

### APPLICATION FOR ACCESS TO ELECTRONIC DEVICE OR INFORMATION SYSTEM

#### Application for access to electronic device or information system

29. (1) A member may make an application for an authorisation under this section to a judge of the District Court where the member believes that there are reasonable grounds for suspecting that evidence of or relating to the commission of—

- (a) an indictable offence, or
- (b) a summary offence under a provision of an enactment specified in *Schedule 2*, may be—
  - (i) contained in, or accessible from, a particular electronic device or information system seized under *Part 2* or *Part 3*, or
  - (ii) contained in data, contained in or accessible from an electronic device or information system, that has been captured pursuant to a search warrant to which *section 19(2)* applies.

(2) An application made under this section shall be in such form, and made in such manner, as may be prescribed and shall include the following information on oath:

- (a) a statement of the grounds referred to in *subsection (1)* on which the application is made;
- (b) a description of the electronic device or information system the subject of the application;
- (c) where applicable, a statement of the information referred to in *subsection (3)*;
- (d) any other information known to the applicant that he or she considers may affect the granting of the application.

(3) Where an applicant suspects that privileged material may be contained in, or accessible from, any electronic device or information system the subject of the application, the application shall include such information as is known to him or her relating to—

- (a) the nature of the privileged material concerned, and
- (b) any other matter relating to the privileged material that the applicant considers relevant to the issuing of the search warrant.

(4) A judge of the District Court hearing an application made under this section may require the applicant to provide the Court with such further information as it considers necessary in order to determine the application.

(5) A judge of the District Court may, on an application made under this section, issue an authorisation under this section, if satisfied by information provided by the applicant that—

- (a) there are reasonable grounds for suspecting that evidence of or relating to the commission of an indictable offence or a summary offence specified in the

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application may be found on the electronic device or information system the subject of the application, and

(b) the issuing of the authorisation is necessary and proportionate.

(6) An authorisation under this section shall be in such form as may be prescribed and shall be expressed to and shall operate to authorise the person to whom it is issued (in this section referred to as the “authorised member”) and such other persons as the authorised member considers necessary to do one or more of the following:

(a) capture, where necessary, and conduct a privilege screening of the data (whether captured or not) contained in, or accessible from, the electronic device or information system specified in the authorisation;

(b) capture, where necessary, and conduct a digital forensic examination of data (whether captured or not) contained in, or accessible from, an electronic device or information system specified in the authorisation.

(7) An authorisation under this section may be expressed and operate to authorise the authorised member, in addition to exercising any power specified in subsection (6), to require any person who appears to the authorised member to have access to, or to have under his or her power or control, the information contained in, or accessible from, an electronic device or information system to do one or more of the following:

(a) to give to him or her any passwords, pin codes or other codes, biometric data or any other information necessary to access the electronic device or information system;

(b) to otherwise enable him or her to examine the information contained in the electronic device or information system in a form in which the information is visible and legible;

(c) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

(8) Where a member, when performing a function under any provision of this section or acting under the authority of an authorisation, has reasonable grounds to suspect that a person has committed, or is committing, an offence, the member may require the person to provide his or her name, address and date of birth to the member.

(9) A person who—

(a) in relation to a reasonable requirement of a member performing a function under any provision of this section, or acting under the authority of an authorisation, gives a name, address or date of birth which is false or misleading in a material respect,

(b) obstructs or attempts to obstruct any member acting in the course of his or her performing a function under any provision of this section, or acting under the authority of an authorisation, or

(c) fails to comply with a reasonable requirement of a member performing a function under any provision of this section, or acting under the authority of an authorisation,

shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or
- (ii) on conviction on indictment, to a fine not exceeding €30,000 or imprisonment for a term not exceeding 5 years, or to both.

(10) An application made under this section shall be heard otherwise than in public. 5

(11) A record shall be made of the hearing of an application made under this section.

(12) In this section, “applicant” means the member who makes an application under subsection (1).

## PART 5

### PERSONS IN GARDA CUSTODY

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#### Interpretation (Part 5)

30. In this Part—

- “consultation” has the meaning assigned to it by section 32(1);
- “custody officer” means a member appointed as a custody officer by the Commissioner;
- “custody record” has the same meaning as it has in the Regulations of 1987; 15
- “electronic recording” means a recording on a recording medium of one or both of the following:
  - (a) an oral communication, statement or utterance;
  - (b) a series of visual images which, when reproduced on a recording medium, appear as a moving picture; 20

“legal practitioner” has the meaning it has in the Legal Services Regulation Act 2015;

“person in custody” means a person in custody in a Garda custody facility;

“Regulations of 1987” means the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987).

#### Access to legal practitioner

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31. (1) The custody officer of a Garda custody facility shall, without delay, inform or cause to be informed a person in custody in the facility, in a manner and language that the person understands—

- (a) of the effect of sections 32(1), 33, 34 and 35,
- (b) of the procedure under subsections (2) to (4), 30
- (c) that, if he or she wishes to avail of the services of a legal practitioner for the purposes of section 32(1) or 33, the legal practitioner can also advise him or her of any entitlement he or she may have to free legal advice or assistance, and

(d) that, if he or she does not wish at a particular time to avail of the services of a legal practitioner for the purposes of *section 32(1)* or 33, he or she will not be precluded from seeking such representation later.

(2) Where a person in custody expresses a wish to avail of the services of a legal practitioner for the purposes of *section 32(1)* or 33, the custody officer shall, as soon as practicable and subject to *subsection (4)*, notify, or cause to be notified, a legal practitioner of this wish. 5

(3) The custody officer shall, subject to *subsection (4)*, notify another legal practitioner where—

(a) following the notification of a legal practitioner for the purposes of *subsection (2)*, the legal practitioner is unable or unwilling to consult with the person in custody within a reasonable timeframe, or 10

(b) following the attempted notification of a legal practitioner for the purposes of *subsection (2)*, the legal practitioner cannot be contacted within a reasonable timeframe. 15

(4) The custody officer, in complying with *subsection (2)* or (3), shall, in so far as practicable, notify the legal practitioner requested by the person in custody.

#### **Entitlement to consult with legal practitioner**

32. (1) Subject to this Part, a person in custody shall be entitled, including prior to his or her being interviewed, to meet in private and communicate with a legal practitioner (in this Part referred to as a “consultation”). 20

(2) A consultation—

(a) subject to *paragraph (c)*, shall take place in private,

(b) shall take place in person or, where the person in custody consents, by the use of any means of communication by which the person and the legal practitioner can hear and be heard at the same time, and 25

(c) may take place in the sight but out of the hearing of a member of the Garda Síochána or the custody officer.

#### **Entitlement of legal practitioner representing person in custody to be present at interview**

33. Subject to this Part, a legal practitioner, for so long as he or she is representing a person in custody, shall be entitled to be present at any interview of the person that is conducted. 30

#### **Interview of person in custody**

34. (1) Subject to this section, a person in custody may be interviewed only where—

(a) he or she has had a consultation with a legal practitioner, and

(b) where he or she is represented by a legal practitioner, the legal practitioner is present at the interview. 35

(2) The requirement specified in *paragraph (a)* of *subsection (1)* shall not apply where the person concerned has waived, or is deemed to have waived, his or her entitlement

under *section 32(1)* and that waiver or deemed waiver has not been revoked under *section 35(6)*.

(3) The requirement specified in *paragraph (b)* of *subsection (1)* shall not apply where the person concerned has consented, or is deemed to have consented, to the interview being carried out without the legal practitioner representing him or her being present and that consent or deemed consent has not been revoked under *section 35(6)*. 5

(4) Subject to *subsection (6)*, a member not below the rank of inspector may authorise the interview of a person in custody where the person has not yet availed of his or her entitlement under *section 32(1)* or the requirement under *subsection (1)(b)* is not met, where, and for so long as, the member concerned considers such an authorisation justified on the basis that the member has reasonable grounds for believing that to delay the questioning would involve a risk of— 10

- (a) interference with, or injury to, other persons,
- (b) serious loss of, or damage to, property,
- (c) the destruction of, or interference with, evidence,
- (d) accomplices being alerted or the securing of their apprehension being made more difficult, or
- (e) hindering the recovery of property obtained as a result of an offence or the recovery of the value of any proceeds of an offence.

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(5) (a) A member may give an authorisation under *subsection (4)* only if he or she is independent of the investigation of the offence in relation to which the person concerned is in custody. 20

(b) For the purposes of this subsection, a member is independent of the investigation of the offence only where he or she is not, and has not been, in charge of, or involved in, the investigation. 25

(6) The member who gives an authorisation under *subsection (4)* shall, as soon as is practicable, give or cause to be given a notice in writing in the prescribed form to the person the subject of the authorisation which shall— 30

- (a) state that the authorisation has been given, and
- (b) specify the time at which the authorisation was given together with the time at which the notice was given,

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and that member shall explain, or cause to be explained, to the person orally, in a manner and language that the person understands, the effect of the notice so given.

(7) An authorisation under *subsection (4)* shall be recorded in the custody record. 35

#### **Waiver, consent, etc. by person in custody**

**35.** (1) A person other than a child may waive his or her entitlement under *section 32(1)*, provided that—

- (a) he or she has been informed—
  - (i) in accordance with *section 31(1)*, of the entitlement concerned, and

(ii) of the consequences of waiving the entitlement and of the effect of subsection (6),

and

(b) the waiver is given, whether orally or in writing, unequivocally and voluntarily.

(2) A person shall be deemed to have waived his or her entitlement under *section 32(1)* 5 where—

(a) he or she is informed in accordance with *section 31(1)* of the entitlement and does not express a wish to avail of the entitlement, or

(b) a legal practitioner has made himself or herself available for the purpose of consultation under that section and the person concerned refuses to consult with the legal practitioner. 10

(3) A person other than a child may consent to an interview being carried out without the legal practitioner representing him or her being present, provided that—

(a) he or she has been informed—

(i) in accordance with *section 31(1)*, of the effect of *section 33*, and 15

(ii) of the consequences of so consenting and of the effect of subsection (6),

and

(b) the consent is given, whether orally or in writing, unequivocally and voluntarily.

(4) A person shall be deemed to have consented to an interview being carried out without the legal practitioner representing him or her being present where— 20

(a) he or she is informed in accordance with *section 31(1)* of the effect of *section 33* and does not express a wish to be represented by a legal practitioner for the purposes of that section, or

(b) a legal practitioner has made himself or herself available to be present, for the purposes of *section 33*, at the interview of the person and the person concerned refuses to agree to the legal practitioner being so present. 25

(5) Where subsection (2) or (4) applies in respect of a person in custody, the custody officer shall inform, or cause to be informed, the person, in a manner and language that the person understands, of—

(a) that fact of the deemed waiver or deemed consent, as the case may be, 30

(b) the consequences of the deemed waiver or deemed consent, as the case may be, and

(c) the effect of subsection (7).

(6) A person who, under this section waives an entitlement, or consents to an interview being carried out without the legal practitioner representing him or her being present, may, at any time, orally or in writing, revoke that waiver or consent as the case may be and such a revocation shall have immediate effect. 35

(7) A person who, under this section, is deemed to have waived an entitlement, or is deemed to have consented to an interview being carried out without the legal

practitioner representing him or her being present, may, at any time, orally or in writing, request that such deemed waiver or deemed consent, as the case may be, be set aside and, where such a request is made, the deemed waiver or deemed consent, as the case may be, shall be set aside with immediate effect.

(8) The following shall be recorded in the custody record:

5

- (a) a waiver under *subsection (1)*;
- (b) a deemed waiver under *subsection (2)*;
- (c) a consent under *subsection (3)*;
- (d) a deemed consent under *subsection (4)*;
- (e) the provision of information to a person in accordance with *subsection (5)*;
- (f) a revocation under *subsection (6)*;
- (g) the setting aside of a deemed waiver or deemed consent under *subsection (7)*.

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#### **Application of Part to other persons**

36. Where a person other than a person referred to in *section 31(1)* is in custody in a Garda custody facility, this Part shall, with any necessary modifications, apply to that person.

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#### **Custody record**

37. A custody record may be kept in electronic or written form.

#### **Electronic recording of interviews**

38. (1) Subject to *subsection (2)*, a recording of any interview conducted at a Garda custody facility of a person—

20

- (a) shall, in the case of a person who is in custody under a provision specified in *Schedule 3*, and
- (b) may, in the case of a person who is in custody under any other enactment, be made by electronic recording.

(2) Where it is proposed to make a recording of an interview at a Garda custody facility by electronic recording, and the recording medium or other recording equipment used for such purpose is not available for use or fails to work, a member present at the interview shall make a written note of the interview or, where the unavailability or failure occurs at any time in the course of the interview, the portion of the interview that occurs from such time.

25

(3) Nothing in this section shall operate to preclude the making of a recording by electronic recording of any interview or statement not referred to in *subsection (1)*.

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## PART 6

### MISCELLANEOUS PROVISIONS

#### **Obligation to administer caution**

39. (1) A member shall administer a caution to a person—

- (a) where the member is questioning the person and has decided to charge the person with an offence, 5
- (b) where the member is in the presence of the person and there are reasonable grounds for believing that the person is on the threshold of admitting involvement in an offence,
- (c) where the member arrests the person, 10
- (d) prior to the commencement of an interview at a Garda custody facility,
- (e) where an arrested person is to give a voluntary statement, prior to the commencement of that statement, or
- (f) on any other occasion where the person is charged with, or informed that he or she may be prosecuted for, an offence. 15

(2) Nothing in this section shall operate to prevent the administration of a caution in circumstances or times other than those specified in *subsection (1)*.

(3) A caution administered under *subsection (1)* or in circumstances referred to in *subsection (2)* shall be in the following terms:

“You are not obliged to say anything unless you wish to do so, but whatever you say will be recorded and may be given in evidence.”. 20

(4) In any circumstance or at any time referred to in *subsection (1)*, where a person makes a statement before there is time to caution him or her, the statement shall not be rendered inadmissible for that reason.

(5) Where *subsection (4)* applies, a member shall administer a caution to the person as soon as possible. 25

#### **Amendment of section 9 of Criminal Law Act 1976**

40. Section 9 of the Criminal Law Act 1976 is amended by the insertion, after “proceedings in relation to”, of “misconduct (within the meaning of Part 6 of the Policing, Security and Community Safety Act 2024) by a member of An Garda Síochána or”. 30

#### **Amendment of section 50 of Criminal Justice Act 2007**

41. Section 50(1) of the Criminal Justice Act 2007 is amended—

- (a) in paragraph (a), by the deletion of “involving the use of a firearm or an explosive”,
- (b) by the insertion of the following paragraph after paragraph (b): 35

“(ba) manslaughter,”,

- (c) in paragraph (e), by the substitution of “2006,” for “2006, or”,
- (d) in paragraph (f), by the substitution of “1861, or” for “1861.”, and
- (e) by the insertion of the following paragraph after paragraph (f):
  - “(g) an offence under section 2 or 4 of the Criminal Law (Human Trafficking) Act 2008.”.

5

## SCHEDULE 1

### *Section 10(1)*

1. Murder.
2. Manslaughter.
3. An offence of malicious damage to property involving the use of fire or of any explosive substance (within the meaning of the Explosive Substances Act 1883). 5
4. Escape from lawful custody.
5. An offence under the Firearms Acts 1925 to 2023.
6. An offence under the Offences against the State Act 1939 or an offence that is for the time being a scheduled offence for the purposes of Part V of that Act. 10
7. An offence under section 112(2) of the Road Traffic Act 1961.
8. An offence under section 11 of the Air Navigation and Transport Act 1973.
9. An offence under section 2, 3 or 10 of the Criminal Law (Jurisdiction) Act 1976.
10. An offence under the Criminal Law Act 1976.
11. An offence under section 12(1) of the Firearms and Offensive Weapons Act 1990. 15
12. An offence under section 4, 4A, 4B, 15, 16 or 17 of the Non-Fatal Offences against the Person Act 1997.
13. An offence under section 3, 4, 4A, 5, 5A or 6 of the Child Trafficking and Pornography Act 1998.
14. An offence under section 4, 12, 13 or 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001. 20
15. An offence under section 2 or 4 of the Criminal Law (Human Trafficking) Act 2008.
16. An offence under section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021.

## SCHEDULE 2

*Sections 17(1)(b) and 27(1)(b)*

### SUMMARY OFFENCES FOR WHICH A SEARCH WARRANT UNDER *PART 3* CAN BE OBTAINED

1. An offence under section 4, 5 or 9 of the Explosives Act 1875.
2. An offence under section 2, 2A, 2C, 2D, 3, 4A, 4C, 5A, 11, 12, 13, 14A, 21 or 22 of the Firearms Act 1925. 5
3. An offence under section 3, 4, 7, 11 or 12 of the Wireless Telegraphy Act 1926.
4. An offence under section 14 of the Censorship of Publications Act 1946.
5. An offence under section 4, 9A, 14, 26, 27B, 28, 30 or 41 of the Gaming and Lotteries Act 1956. 10
6. An offence under section 26 of the Intoxicating Liquor Act 1962.
7. An offence under section 9 of the Official Secrets Act 1963.
8. An offence under section 17 or 20 of the Misuse of Drugs Act 1977.
9. An offence under section 2, 3 or 5 of the National Monuments (Amendment) Act 1987. 15
10. An offence under section 5, 6, 8, 9, 11, 12, 13, 16, 19, 20, 21 or 22 of the Video Recordings Act 1989.
11. An offence under section 12(1)(h) of the Consumer Credit Act 1995.
12. An offence under section 6, 7, 7A, 8, 9, 10 or 11 of the Criminal Law (Sexual Offences) Act 1993. 20
13. An offence under section 92, 93, 94 or 97 of the Trade Marks Act 1996.

### SCHEDULE 3

#### *Section 38(1)(a)*

1. Section 30 of the Offences against the State Act 1939.	
2. Section 4 of the Criminal Justice Act 1984.	
3. Section 2 of the Criminal Justice (Drug Trafficking) Act 1996.	5
4. Section 42 of the Criminal Justice Act 1999.	
5. Section 50 of the Criminal Justice Act 2007.	
6. Section 16 or 17 of the Criminal Procedure Act 2010.	



# BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú i ndáil leis an gcumhacht atá ag comhaltaí den Gharda Síochána chun daoine agus feithicí a stopadh, agus chun cuardach a dhéanamh orthu, in imthosca sonraithe; do dhéanamh socrú i ndáil le háitreabh a chuardach; do dhéanamh socrú i ndáil leis an mbail a chuirfear ar dhaoine faoi choimeád; do thabhairt tuilleadh éifeachta do Threoir 2013/48/AE ó Pharlaimint na hEorpa agus ón gComhairle an 22 Deireadh Fómhair 2013 maidir leis an gceart rochtana ar dhlíodóir in imeachtaí coiriúla agus in imeachtaí a bhaineann le barántas gabhála Eorpach, agus maidir leis an gceart chun tríú páirtí a chur ar an eolas ar chailleadh saoirse agus chun cumarsáid a dhéanamh le tríú pearsana agus le húdaráis chonsalachta nuair a chailltear saoirse; do leasú an Acharta um an Dlí Coiriúil, 1976, an Acharta um Cheartas Coiriúil (Forálacha Ilghnéitheacha), 1997 agus an Acharta um Cheartas Coiriúil, 2007; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Seanadóir Seán Ó Cadhain a thíolaic thar ceann an Aire Dlí agus Cirt, Gnótháí Baile agus Imirce,

14 Eanáir, 2026

# BILL

(as initiated)

entitled

An Act to make provision in relation to the power of members of An Garda Síochána to stop and search persons and vehicles in specified circumstances; to make provision in relation to the search of premises; to make provision in relation to the treatment of persons in custody; to give further effect to Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities when deprived of liberty; to amend the Criminal Law Act 1976, the Criminal Justice (Miscellaneous Provisions) Act 1997 and the Criminal Justice Act 2007; and to provide for related matters.

Presented by Senator Seán Kyne on behalf of the Minister for Justice, Home Affairs and Migration,

14th January, 2026

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OFIG AN tSOLÁTHAIR  
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FOILSEACHÁIN RIALTAIS,  
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