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**Houses of the  
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An Comhchoiste um Dhlí agus Ceart agus Comhionannas

Tuarascáil maidir le Grinnscrúdú ar Bhille an Gharda Síochána (Leasú), 2017  
[BCP]

Meán Fómhair 2018

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**Houses of the Oireachtas**

Joint Committee on Justice and Equality

Report on Scrutiny of the Garda Síochána (Amendment) Bill 2017 [PMB]  
September 2018

**32/JAE/27**

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## **Introduction**

The Garda Síochána (Amendment) Bill 2017 was introduced into Dáil Éireann by Deputy Jim O’Callaghan on the 6th of April, 2017. The Bill completed Second Stage and was referred to the Select Committee on Justice and Equality on the 16<sup>th</sup> of November, 2017.

## **Procedural basis for scrutiny**

Private Members Bills referred to Select Committee are subject to the provisions of Standing Order 141(2) [Dáil] which provides that a Select Committee “shall undertake detailed scrutiny of the provisions of such Bills....and shall report thereon to the Dáil prior to Committee stage consideration....” unless the Committee decides in relation to a particular Bill that detailed scrutiny is not necessary.

Paragraph (3) of Standing Order 141 permits scrutiny of the Bill in Joint Committee, viz. “Nothing in this Standing Order shall preclude a Joint Committee from undertaking detailed scrutiny as set out in paragraph (2) and reporting thereon to both Houses prior to Committee Stage consideration of the Bill by the Select Committee.”.

## **Main provisions of the Bill**

The purpose of the bill is to provide for specific provisions in regard to expanding the powers of the Policing Authority and the Garda Inspectorate by amending Sections 41A, 62, 62H and 117 of the Garda Síochána Act 2005 (hereafter “the Principal Act) in order to help restore the public trust in An Garda Síochána.

## **Pre-Committee scrutiny**

On the 30th of May 2018, the Committee was addressed by the Bill’s sponsor, Deputy O’Callaghan, and also heard evidence from the Policing Authority, represented by Ms. Josephine Feehily, Chairperson, and Ms. Helen Hall, Chief Executive Officer. On the 23<sup>rd</sup> of May, the Garda Inspectorate appeared before the Committee, and made reference to the Bill in its opening statement.

Deputy O'Callaghan briefed the Committee on the main provisions of the Bill, outlining the shortcomings of the current legislation that the Bill proposes to address. He stated the drafting of the Bill arose from a number of controversies involving An Garda Síochána, and the need to restore public confidence in the police service. He outlined the sections of the Bill and the proposed amendments as follows:

Section 2 of the Bill proposes to amend Section 41A of the Principal Act to impose an obligation on An Garda Síochána to inform the Policing Authority about any matters which have required an internal review, audit or examination of the functions or operation of An Garda Síochána, and which were requested by the Garda Commissioner, Deputy Commissioner or any Assistant Commissioner.

Section 3 proposes an amendment to Section 62 of the Principal Act giving power to the Policing Authority to dismiss a member of An Garda Síochána if their membership undermines public confidence in the force. An amendment to section 62H of the Principal Act seeks to give powers to the Policing Authority to supervise the functioning of the Garda Commissioner's office and the discharge of functions by the Commissioner.

The final proposal, in section 5, seeks to amend section 117 of the Principal Act, giving powers to the Garda Inspectorate to be able to enter, inspect and review any Garda station or premises without prior notification.

#### **Views of the Policing Authority**

While the Policing Authority welcomes the idea of 'broader' powers, Ms. Josephine Feehily, Chairperson, outlined that the Authority had some issues with the wording of the Bill. Ms. Feehily referenced the need to provide a less complex oversight architecture, and cautioned that the Bill as proposed carried the risk of introducing further complication for the Authority.

With regard to spontaneous notification, Ms. Feehily stated that the Policing Authority welcomes the amendment in section 2, though identified risks with the wording being too prescriptive. As recommended in the Authority's submission to

the Commission on the Future of Policing, Ms. Feehily's preference would be a simpler amendment to section 41(a) of the Principal Act:

"Our preference, which was in our section 62(O) report, was a simple amendment to section 41(a). Section 41(a) states that the Garda Commissioner shall keep the Minister and the Secretary General fully informed of matters such as the preservation of peace, protection of life, "significant developments that might reasonably be expected to affect adversely public confidence in the Garda Síochána", and two others. The Deputy mentioned the breath test issue. The remarkable aspect of that is the Garda told the Department of Justice and Equality; it just forgot to tell us. If the authority is in the same line, whereby if the Garda Commissioner has to tell the Minister something he or she also has to tell the authority, it might be a simpler and more comprehensive solution to the issue. That is what we recommended in our report on our powers."

In relation to section 3, Ms. Feehily outlined that this section would provide for a repetition of a power already available. The Authority already has the power to consent to a dismissal once the facts of the case are established. Greater powers, including those of investigation, would be required in cases where the facts were not established, leading to more duplication of work amongst oversight bodies. Ms Feehily also expressed concern with the introduction of Government consent to dismissal:

"Finally, we are concerned at the introduction of the Government's consent to the dismissal. When the authority was established, there was a definite effort to take as much as possible away from the Government in the statutory framework. We would be concerned that if the appeal from the authority was to the Government, it might reintroduce a politicisation that would be unhelpful. Our preference would be, and Mr. Justice Charleton spoke about this when referencing the Morris tribunal, that the entire disciplinary process be examined from top to bottom. The acting Garda Commissioner told us recently that he was starting that process.

There has been preliminary engagement with the Workplace Relations Commission with a view to starting some work in that regard. A bigger change is needed. Section 3 could complicate this and reintroduce the Government in a way that might not be helpful to the overall statutory framework.”

Finally, with regard to section 4, Ms. Feehily reiterated the need for clarity in the oversight architecture, and highlighted that giving the Policing Authority powers to oversee the offices of the Garda Commissioner while the Commissioner is accountable to the Minister would not be workable. While the Policing Authority has little issue with section 4, Ms. Feehily submitted that the wording needed to be clearer to avoid creating conflict and further complicating oversight.

#### **Views of the Garda Inspectorate**

In its opening statement to the Committee on the 23<sup>rd</sup> March 2018, Mr. Mark Toland, Chief Inspector, stated that the Garda Inspectorate fully support the proposal that the Inspectorate be given the power to conduct unannounced visits. However, the Inspectorate believes that the requirement to obtain the approval of the Minister for these visits should not be a condition of that power:

“We are very grateful that the Committee made it a recommendation (in a previous report). It would enhance our abilities and mean that we would not have to make appointments to carry out visits. We do not get the impression that our visits are always stage managed, but it is important to be able to go in and carry out real-time checks in certain areas. If we were to get involved in inspecting places of detention, it would be a prerequisite. One has to be able to turn up unannounced in that context. In a response in Parliament the Minister has said he does not think his approval is required every time we want to make a visit. It may just be the way it has been written, but to us, it seems impracticable that every time we wanted to make a visit, we would need ministerial approval which might be required if it was an issue of State security. It might be something that would need to be considered if we were to go into an area to inspect very sensitive

material. However, we do not think we should need to seek ministerial approval in general before we visit a Garda division or region or most national units. I am not sure it was intended to be drafted in that way, but that is very much how we have interpreted the Private Members' Bill.”

### **Recommendations of the Joint Committee**

The Committee broadly welcomed the Bill and agreed that, pursuant to Standing Orders, it would report to Dáil Éireann that it has undertaken and completed pre-Committee Stage scrutiny of the Bill, with the following recommendations:

- Whilst the Committee welcomes the amendment contained in section 2 of the Bill, it would prefer a simpler, less prescriptive wording to amend section 41(a) of the Principal Act to encapsulate a broader range of events. The amendment should stipulate that where there is an obligation on the Garda Commissioner to inform the Minister of something, he or she must also inform the Policing Authority.
- Regarding section 3, the Policing Authority already has the power to consent to a dismissal once the facts of a case are established. Careful consideration should be given to whether it is the intention of the Bill to extend this remit to cases where the facts are not yet established. This would require additional resources and powers for the Authority, including those of investigation.
- The requirement in section 3 for the Government to consent to a member’s dismissal should be removed in favour of a less politicised appeal mechanism.
- In regard to section 4, the Committee does not oppose the giving of additional powers to the Policing Authority to oversee the offices of the Garda Commissioner. However, there is a need first for reform of the overall structure of Garda oversight in order to remove

duplication and ambiguity as to the precise roles of the various oversight bodies, as well as that of the Minister for Justice and Equality. In particular, there is a need to clearly delineate the ambit of the Minister's oversight responsibility and the ambit of the Authority's responsibility.

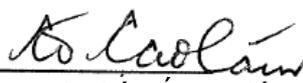
- Whilst welcoming the proposal contained in section 5 of the Bill to enable the Garda Inspectorate to carry out inspections of stations without prior notice to a member of An Garda Síochána, the Committee believes that the requirement for Ministerial approval for unannounced visits should be removed.

### **Minister's observations**

The Minister for Justice and Equality was included in the circulation of a draft of this report, in accordance with Standing Order 141(2), as an *ex officio* Committee Member, and invited to make observations.

### **Conclusion**

The Committee concluded that, as there is no requirement for a message from the Government pursuant to Article 17(2) of the Constitution and Standing Order 179(2), the Bill should proceed to formal Committee Stage.

  
Caoimhghín Ó Caoláin T.D.  
Chairman  
September 2018



OIFIG AN AIRE DLÍ AGUS CIRT AGUS COMHIONANNAIS  
OFFICE OF THE MINISTER FOR JUSTICE AND EQUALITY

Damian Byrne  
Clerk of the Committee on Justice and Equality  
Leinster House  
Dublin 2

**Re: Report on Scrutiny of the Garda Síochána (Amendment) Bill 2017 [PMB]**

Dear Damien,

I wish to acknowledge receipt of the draft 'Report on Scrutiny of the Garda Síochána (Amendment) Bill 2017 [PMB]'.

I want to thank the Committee for the opportunity to provide my observations and also for the opportunity to acknowledge the contributions of all those who engaged with and assisted the Committee, in connection with the Bill and in the wider context of the important issues of Garda accountability and oversight.

It goes without saying that the Government is fully supportive of the Policing Authority and the Garda Síochána Inspectorate having appropriate powers so that they can carry out their oversight functions in an efficient manner.

I acknowledge and appreciate the recommendations of the Committee following the pre-Committee scrutiny and that amendments based on these go some way to addressing some of the issues I identified with the Bill. However, I continue to have difficulties with the provisions.

In this regard I refer to my statements in the House at Second Stage of the Bill. In particular, and perhaps most seriously, the Bill fails to make a distinction between policing and security matters. In addition, the Bill does not take account of the interaction of its provisions with other provisions in the current legislation, for example, the duty of the Garda Commissioner to keep the Policing Authority fully informed on relevant matters, the current framework for removal of members of An Garda Síochána and an agreed written protocol between the Garda Síochána Inspectorate and An Garda Síochána. Further, the Bill purports to give the Authority the power to supervise and direct the Garda Commissioner. These difficulties were discussed in greater depth during the Second Stage of this Bill - <https://www.oireachtas.ie/en/debates/debate/dail/2017-11-09/48/>

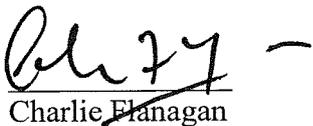
Also, as I stated at Second Stage, the timing of this Bill does not take account of the process underway through the Commission on the Future of Policing in Ireland. I am convinced that further ad hoc legislative change at this point, even without the deficiencies that I have mentioned, would be wrong.

Once the Commission has reported, and following appropriate consideration, I will bring forward legislative proposals. At that point, the legislative framework around An Garda

Síochána, the Policing Authority and other governance bodies can be considered in a holistic manner.

In conclusion, I welcome and share the Committee's genuine and sincere commitment to reform of An Garda Síochána. Where we disagree is on the timing of further legislative change. I fully acknowledge that there is a serious need to further reform the governance framework for policing in the State and this is evidenced in the terms of reference set for the Commission by the Government.

Yours sincerely



Charlie Flanagan  
Minister for Justice and Equality

7/8/18

## Appendix 2 – Committee Membership

### Joint Committee on Justice and Equality

#### Deputies



Caoimhghín Ó Caoláin TD  
(SF) [Chair]



Colm Brophy TD  
(FG)

Jack Chambers TD  
(FF)

Clare Daly TD  
(I4C)

Peter Fitzpatrick TD  
(FG)



Jim O'Callaghan TD  
(FF)

Mick Wallace TD  
(I4C)

## Senators



Frances Black  
(CEG)



Lorraine Cimoru-Lee  
(FF)



Martin Conway  
(FG)



Niall Ó Donnghaile  
(SF)

## Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 16th June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 20<sup>th</sup> July 2016.

## Appendix 3 – Terms of Reference of Committee

### JOINT COMMITTEE ON JUSTICE AND EQUALITY

#### TERMS OF REFERENCE

#### **a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
  - (c) Estimates for Public Services, and
  - (d) other matters

as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

- (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
  - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
  - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
  - (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

- (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.
- (8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
  - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].

- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
- (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

- (6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

## Appendix 4 – Opening Statements

### Garda Síochána (Amendment) Bill 2017

#### Opening Statement

#### Jim O'Callaghan TD

The primary purpose of this Bill is to put in place a better framework for Garda oversight and governance so to ensure Garda accountability and to improve public confidence in the force. The men and women of the Garda Síochána are dedicated and deserve our continued support and admiration for going beyond the call of duty in keeping our communities safe.

It is however hard to ignore that An Garda Síochána has been rocked by countless scandals in recent years. There are many reasons for this and the government has played its own role in depleting Garda stations and letting low morale fester. While there has latterly been a lot of announcements trying to strengthen Garda accountability –we believe more has to be done.

This Bill was introduced in the wake of the press confidence at which senior members of An Garda Síochána informed the people of Ireland that between 2012 and 2016 almost 1 million breath tests were falsely recorded on the Garda PULSE system (this was subsequently revised upwards to 1.85 million breath tests). At that same press conference, the Gardaí also advised that between 2006 and 2016, almost 15,000 wrongful convictions took place in our District Courts because of errors made by An Garda Síochána.

It is vital that a strong framework is put in place to improve oversight and help restore public confidence in the force. We believe that the Garda will only be reformed if we change the laws in respect of how it operates. This is not the only basis on which it can be done, but it will not happen without it.

The Policing Authority is a major tool in the quest to ensure that reform of An Garda Síochána takes place. The Policing Authority has been given certain functions and responsibilities through the primary legislation through which it was established. This Bill seeks to give greater powers to the Policing Authority.

Currently there is no obligation on An Garda Síochána to inform the Policing Authority about any matters which have required an internal review, audit or examination of the functions or operation of An Garda Síochána, and which were requested by the Garda Commissioner, deputy Commissioner or any assistant Commissioner. In Section 2 of this Bill we seek to introduce such an obligation. The absence of such an obligation allowed a situation to transpire whereby the Gardaí knew of discrepancies in mandatory intoxicant checkpoint data as far back as 2014: a working group was established within An Garda Síochána to investigate these matters in July 2015: the group reported a discrepancy in November 2017 but these issues did not come into the public domain until March 2017. We need to ensure that senior management within An Garda Síochána are thoroughly supervised so that issues like this cannot be put into the public domain at the time and choosing of An Garda Síochána.

Section 3 seeks to amend section 62 of the principal act by putting in place powers that allow the Policing Authority to remove a member of An Garda Síochána if it is of the opinion that a member's conduct or continued membership of the organisation is undermining public confidence in the force. The relevant member is entitled to defend himself or herself in accordance with the principals of natural justice and the dismissal directed by the Policing Authority will have to be approved by the Government.

Section 4 seeks to extend the powers of the Policing Authority in a manner proposed by the Joint Committee on Justice and Equality (published in 2016). The section gives powers to the Policing Authority so that it can supervise the functioning of the Office of the Garda Commissioner and supervise the discharge of the functions by the Commissioner. It also seeks to establish policies and procedures for An Garda Síochána which shall be binding on all members of An Garda Síochána. Furthermore, the Bill seeks to cause to be published and made accessible to the public all sections of the Garda code and operational policies and procedures (save where such publication would undermine national security or crime prevention and detection). Transparency in relation to the codes under which the Gardaí operate is crucial in building trust in the organisation.

The Bill empowers the Garda Inspectorate (with the approval of the Minister) to make unannounced visits to Garda stations

## Meeting of the Joint Oireachtas Committee on Justice and Equality – 30 May 2018

### Opening Statement by Josephine Feehily, Chairperson of the Policing Authority

Chairperson

Thank you for the opportunity to make a brief opening statement. It is quite an unusual but interesting position for a public body to be invited to discuss in person legislative proposals to give it new powers after they have passed second stage, but on reviewing the second stage debates it seems that the Minister for Justice and Equality may have suggested it – so perhaps I should thank him!

There were several references in the course of the second stage debate to the obligation on the Authority under Section 62(0) to report within two years on its effectiveness and the adequacy of its functions. For that reason, it seems to me that the most useful opening remarks I could make is to refer Members of the Committee to that Report, which was sent by the Authority to the Minister for Justice and Equality on 22 December 2017 and laid before the Oireachtas on 19 January 2018 and is published by the Authority in its website. The report made a range of observations and recommendations and 29 specific proposals for legislative change within the existing statutory framework.

Our overall assessment is that the Authority has been a positive disrupter in the Garda/Justice realm and had made a difference. We set out a range of achievements but the report acknowledges that there is quite a way to go. Regarding our functions, we consider that that they are broadly adequate for the tasks assigned to the Authority in the Garda Síochána Act, although frequently cumbersome, overly circumscribed, and inefficient.

Subsequently, the Authority made a submission to the Commission on the Future of Policing which is also published on the Authority's website. The Section 62(0) Report was incorporated into that submission, and for ease of reference for Committee members, the combined document is attached.

#### Governance and Oversight of the Garda Síochána

At the outset, I should repeat the Authority's position that oversight and accountability are essential to give legitimacy to public bodies and that the greater the power, the greater must be the accountability. The Authority would share the view expressed by the Patten Commission that:

*"In a democracy, policing, in order to be effective, must be based on consent across the community. The community recognises the legitimacy of the policing task, confers authority*

*on police personnel in carrying out their role in policing and actively supports them. Consent is not unconditional, but depends on proper accountability, and the police should be accountable in two senses – the ‘subordinate or obedient’ sense and the ‘explanatory and cooperative’ sense”.*

The Authority’s view is that a weakening of the consent to policing is a strategic risk for Garda Síochána organisation, and that transparency and accountability, which may be challenging for the system in the short term, is essential to mitigate that risk.

The Authority’s view is that while the Garda oversight architecture is necessarily complex it is unnecessarily confusing and siloed. There is a widely held perception within the Garda Síochána that there is “too much oversight” or “too much accountability”. The Authority does not agree. Indeed all of the oversight functions currently in place are common to most progressive jurisdictions and we consider that they must continue – inspection, review, performance oversight and challenge, complaints handling, Comptroller and Auditor General, accountability to the Government and to Parliament etc. but that there is scope for rationalisation, reducing ambiguity, limiting duplication and at the same time making sure there are no gaps. We hope that the Commission on the Future of Policing will take a whole of system approach to the recommendations it will make about oversight and accountability.

#### Barriers to the effectiveness of the Authority

In our Report under Section 62(O) of the Garda Síochána Act we identified some significant barriers to the effectiveness of the Authority including lack of performance management information and weak governance within the Garda Síochána. We also spoke about the challenge of overseeing the performance of an organisation, the Garda Síochána, while the Head of that organisation is simultaneously accountable to someone else, in this case the Minister for Justice and Equality.

Importantly we offered the view that uncertainty among stakeholders about the role and function of the Authority has the potential to affect public confidence in its effectiveness and that in our view it had impacted on the manner in which some stakeholders and groups, including the Garda Síochána and the Department of Justice and Equality engage with the Authority. This is largely as a result of a cumbersome legislative scheme, which is why we recommended to the Commission on the Future of Policing that the entire architecture be streamlined to remove duplication.

In this context we pointed out that the role provided for the Minister and the Secretary General of the Department of Justice and Equality is an essential part of the future consideration because their

current role is so all encompassing that it leads to the Department being critically conflicted in its responsibilities in relation to the Garda Síochána and simultaneously to the oversight bodies.

We also proposed to the Commission that it be put beyond doubt in statute that the Garda Commissioner is the Chief Executive of the Garda Síochána, is the de facto employer of all those who work in the Garda organisation, and is independent in the performance of his or her functions, and this recommendation is relevant to the Bill on your agenda today.

### **Conclusion**

I hope Chairperson that these brief remarks about the Authority's recent reports gives the Committee a sense that the Authority would welcome new powers, but would welcome even more if the overall architecture was well defined and clearer, if the expectations of oversight bodies was clearer, and the limitations of oversight inherent in the current statutory framework was better understood.

Regarding the Bill before you, there are parts of it that are really clear, some where I think there are other solutions, and others where the Authority is not clear about how they might fit into the existing architecture. I welcome the opportunity to better understand the intentions of the sections and to discuss the Authority's views.

Finally Chairperson, if I may make a plea. In our report on our effectiveness, we point out that there was no real lead in time for members of the Authority between their appointment and the commencement of our statutory responsibilities. If this Bill is enacted by the Oireachtas, may I ask for a provision that requires a commencement order? Having new responsibilities before you have time to get ready is high risk. However, as we have done with the existing statute, I assure the Committee that the Authority will work to the best of our ability with the statutory framework and the powers and responsibilities given to us.

Thank you



## **Opening Statement by the Garda Inspectorate to Joint Oireachtas Committee on Justice and Equality 23 May 2018**

Good morning Chairman and Committee members and thank you for inviting the Garda Inspectorate here today. I am Chief Inspector Mark Toland and I am joined by Deputy Chief Inspectors, Pauline Shields and Hugh Hume.

The Inspectorate is a statutory body independent in its operation whose function is to ensure that the resources available to the Garda Síochána are used efficiently and effectively.

### **Update since December 2016**

The Inspectorate last appeared before this Committee in October 2016 and we welcome the recommendation in your subsequent report to provide the Inspectorate with a statutory power to conduct unannounced visits. The Inspectorate notes that the Garda Síochána (Amendment) Private Members Bill, 2017 contains such a provision. However, we believe that the requirement to obtain approval of the Minister to exercise this power should not be included.

### **Current Work**

Following a request from the Policing Authority, the Inspectorate is currently conducting an inspection of the delivery of police services to local communities. We are also in the final stages of completing an advice paper for the Minister that is looking at opening up entry routes into the Garda Síochána.

### **Inspectorate Report (12) - Responding to Child Sexual Abuse- A follow up Review (Published 27 February 2018)**

Responding to Child Sexual Abuse is a follow-up review to a previous report published in 2012. For the first time, we forensically re-examined a previously inspected area to assess the progress in implementing our recommendations. The review also examined joint-working arrangements between the Garda Síochána and Tusla under Children First National Guidance.

Since the 2012 report, there has been a considerable increase in the risks posed to children by the internet and social media and the volume of online child abuse material is growing exponentially. This area was also examined in the review.

Child sexual abuse is one of the most serious types of crime that gardaí will ever deal with. This review found that 66% of all recorded sexual offences in Ireland involves a child victim.

As part of this inspection, the Inspectorate critically examined 211 child abuse investigations to assess the quality of garda investigations. This analysis identified that the age profile of victims in these cases ranged from as young as three years of age and that only 5% of suspects were described as strangers.

### **Main Findings in the Report:**

- Five years on from the original 2012 report only 45% of the recommendations can be considered fully implemented;
- Processes in place between the Garda Síochána and Tusla for managing child protection cases are inefficient. Despite some progress in joint-agency working, many barriers still remain. Joint-agency meetings to discuss serious cases do not always take place and decisions are often made separately. We found that other jurisdictions have more structured and dynamic processes for making decisions in these types of cases;
- While the 2012 report recommended multi-agency specialist child centres to provide medical examination, victim interviewing and therapeutic services, there are no such centres in place;
- There are still delays in recording crimes on PULSE;
- Some Garda investigations were conducted expeditiously and to a high standard while many others drifted, with significant delays in taking victim statements, arresting or interviewing suspects, and sending cases to the Director of Public Prosecutions;
- Inexperienced gardaí are still investigating child sexual abuse. This is not good practice;
- Joint interviewing of a child victim by gardaí and social workers is not in place;
- Victim support organisations reported that the relationship between victims and the Garda Síochána has improved;
- Not all convicted sex offenders who should be monitored by the multi-agency SORAM process are subject to those arrangements;
- This review examined 2,000 referrals of child abuse material sent to the Garda Síochána. We requested an update on these cases and despite repeated requests, 12 divisions did not provide updates for some of the cases. We found significant delays at all stages in processing these cases;
- There was an insufficient online garda presence at the time of the review. Other jurisdictions have a stronger online presence to target those grooming children and those accessing child abuse material;
- There are still long delays in the forensic examination of computers and other devices. This is an organisational risk;
- Technology that provides real time intelligence on those accessing child abuse material was available to the Garda Síochána, but was not activated at the time of completing this review. The Inspectorate was recently informed that it is now in use and that additional online garda resources are in place; and
- Like other jurisdictions, prosecution and convictions rates for child sexual abuse cases are low and long delays in conducting investigations does not help.

The Inspectorate welcomes the creation of a Garda National Protective Services Bureau and the roll-out of divisionally based Protective Services Units that will have specially trained

staff. These units have the potential to professionalise the investigation of child sexual abuse and provide better victim care.

To address the findings on joint-agency working, the Inspectorate believes that all relevant government departments and agencies need to work together to reduce the risk of child sexual abuse and exploitation and make the physical and virtual worlds safer places for children.

An important part of the review was the engagement with two adult survivors of child sexual abuse. Their testimonies gave an insight into the difficulties victims sometimes endure once they have reported abuse. The Inspectorate is very grateful for their contributions and the changes recommended in this report are designed to improve the outcomes for all victims.

### **Key Recommendations**

There are 24 new recommendations including:

- To develop a National Strategy for Child Sexual Abuse, Child Sexual Exploitation and Online Risks to Child Safety;
- For the Garda Síochána and Tusla to develop a more dynamic and structured approach to managing child protection cases;
- To develop multi-agency specialist child centres and to ensure joint interviewing of a child;
- To urgently address the backlog in forensic examination of computers and other devices;
- To adequately resource and complete the roll-out of all Divisional Protective Services Units by the end of 2018; and
- To ensure that sufficient garda resources are in place to provide a strong online garda presence.

### **Future work of the Inspectorate**

In November 2017, the Inspectorate made a submission to the Commission on the Future of Policing in Ireland. This is available on our website. We firmly believe that there is a place in the oversight architecture for an independent Inspectorate that is focused on conducting inspections, audits and examinations to ensure that Garda reform is progressed and at pace.

As a new team and having already examined most aspects of policing, the Inspectorate is in the process of developing a strategy and action plan for future work. We are proposing to approach this on a risk basis so that we inspect areas of most relevance and impact having regard to any human rights issues that may arise. In this context, the power to initiate our own work, that was included in the Garda Síochána (Amendment) Act of 2015 following a recommendation by this committee, will be most useful. While our work to date has mainly been large-scale thematic inspections, future work could include post implementation reviews, compliance audits and cyclical inspections.

The Inspectorate has declared an interest to the Department of Justice in participating in the inspection process that will be required following the ratification of the Operational Protocol to the Convention against Torture (OPCAT). This would involve conducting visits to places of detention maintained by gardaí.

## **Conclusion**

The objective of the Inspectorate has always been to help make the Garda Síochána a better service. Better for the public, for victims of crime, for all the people working in the organisation itself and for the criminal justice system in Ireland.

It has always been the Inspectorate's view that implementation of our recommendations is the way forward to reforming the Garda Síochána, but we are disappointed with the pace of change.

Thank you for listening. My team and I are happy to take any questions you may have about the work of the Inspectorate.