

# Opening Statement of Clare Daly MEP to the Joint Oireachtas Committee on Justice on the General Scheme of the Garda Síochána (Powers) Bill.

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The stated goal of the General Scheme of the Garda Síochána (Powers) Bill is to deliver improved police effectiveness & ensure the protection of fundamental rights. This cannot be achieved by the legislation in its current form. In fact, as presently drafted, the Bill would appear to be a veiled attempt to further bolster Garda powers under the guise of consolidation..

My comments here are part of a more expansive written submission by myself & Mick Wallace MEP. I will highlight here the critical areas that need further attention and can expand on other points in the discussion.

## Part 2: Protection of Fundamental Rights

1. Head 6 is key & provides for a general obligation to respect fundamental rights. This needs to be considerably strengthened if it is to form the core of a human rights-based approach to policing in Ireland. The reference to 'fundamental rights' should be replaced with a specific definition of human rights, per [the UN International Covenant on Civil and Political Rights](#) and/or a reference to the EU Charter of Fundamental Rights.

The phrase '*it shall not be lawful*' offers little clarity as to the consequences for any member of An Garda Síochána who breaches human rights standards. There is an ECHR obligation on the state to carry out an independent, effective and prompt investigation if inhuman or degrading treatment is suspected. This head should therefore make explicit provision for this, and should also create a specific offence to apply in cases where a member of an Garda Síochána exercises any power within the Bill in breach of any fundamental human rights.

## Part 3: Stop and Search

Head 9 of the General Scheme provides for the power to stop and search for possession of relevant articles, which the explanatory note says could include a computer used for hacking purposes. This would appear to suggest that *paragraph f* will be used as a catchall clause that will allow members of An Garda Síochána unprecedented powers of warrantless search. In the 21<sup>st</sup> century, when almost all citizens carry a smart phone computer device on their person which could in theory be used as 'hacking equipment', this new proposed power is of grave concern.

*Paragraph F* should be removed in its entirety or a tight definition provided of ‘computer hacking equipment’ in the Definitions section, with a corresponding reference to same under this section.

The Head should include an explicit prohibition on the exercise of stop-and-search powers in a discriminatory way, and Head 13 should introduce a requirement for the ethnicity of each person stopped and searched by gardaí to be recorded.

## **Head 16**

Head 16 sub section (v) which creates new powers under search warrant to access information held by a citizen on a computer (or a mobile phone) in their private dwelling. Without question, this flies in the face of European data protection norms and fundamental rights protections, as does the general and indiscriminate right for gardaí to demand passwords to electronic devices with no conditionality. *Part (V)* should be removed in its entirety.

## **Head 21**

Head 21 of the General Scheme provides for a Garda above the rank of Superintendent to authorise a search warrant in urgent circumstances. The granting of search warrants should stay within the remit of the judiciary. Communications technology has progressed enormously, with remote working having become commonplace for the judiciary during the Covid 19 pandemic. No supporting evidence has been made available regarding the need for this expansion of power.

## **Part 6: Persons in Garda Custody**

### **Head 42**

Head 42 of the General Scheme provides for to access to legal representation and subheads 6-8 are a particular concern with regard to the rights of a person to legal representation & should be deleted in their entirety. In particular, allowing a member of An Garda Síochána to remove a legal representative based on vague and spurious reasons relating to disruptiveness. This is clearly in breach of the constitutional right of access to a legal representative. The right of access to legal representation in criminal proceedings is a key component of the right to a fair trial, enshrined in the Charter.

## **Head 52**

Head 52 relates to the use of reasonable force to take photograph, fingerprint and palm print. This is not proportionate to the task of taking fingerprints and or photographs and further work is required on this section, in particular as regards safeguards against undue use of force, and the right to a prompt and efficient investigation if undue force is suspected or alleged.

## **Part 7: Miscellaneous Provisions**

### **Head 68**

It is remarkable that a Bill which begins with a statement espousing the protection fundamental rights, ends with a clause which would allow members of An Garda Síochána ignore any of the safeguards that accompany the vast powers contained within this Bill.

Undoubtedly, this provision has been influenced by the Supreme Court judgment in DPP vs. JC [2015] IESC 3, but goes even further as gardaí do not need even to argue that any breach of rights under this Bill was inadvertent. Extending the 'carte-blanche' that exists for gardaí to obtain evidence in an unlawful or rights-abusive way would therefore be an absolutely shocking direction for the legislature to go in.

Finally, it should be noted that the clause amounts to an obvious breach of the separation of powers, specifically, as the decision as to admissibility of evidence in a trial lies solely with the judiciary.

I wish the committee well in its deliberations.

**CLARE DALY ME**