

DÁIL ÉIREANN

AN ROGHCHOISTE UM DHLÍ AGUS CEART DHLÍ AGUS CEART

SELECT COMMITTEE ON JUSTICE

Dé Céadaoin, 13 Deireadh Fómhair 2021

Wednesday, 13 October 2021

Tháinig an Romhchoiste le chéile ag 5.30 p.m.

The Select Committee met at 5.30 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	
James Browne,	
Michael Creed,	
Pa Daly,	
Martin Kenny,	
Thomas Pringle,	
Niamh Smyth.	

Teachta/Deputy Jennifer Carroll MacNeill sa Chathaoir/in the Chair.

Garda Síochána (Functions and Operational Areas) Bill 2021: Committee Stage

Vice Chairman: Apologies have been received from the Cathaoirleach, Deputy Lawless. The meeting has been convened to consider Committee Stage of the Garda Síochána (Functions and Operational Areas) Bill 2021. I welcome the Minister of State at the Department of Justice with special responsibility for law reform, Deputy James Browne.

It is important to note that, in order to participate in a division of the committee, members must be physically present. While members may contribute from their office in Leinster House, they have to be here for any vote. In view of the remote participation of some members and in order to ensure contributions are accurately recorded, it is essential for members to wait until I call them by name before commencing a contribution. Members participating remotely might use the raise hand function to indicate their wish to contribute.

Sections 1 to 8, inclusive, agreed to.

SECTION 9

Minister of State at the Department of Justice (Deputy James Browne): I move amendment No. 1:

In page 9, lines 26 and 27, to delete “the equivalent division” and substitute “a division of the Garda Síochána (howsoever expressed)”.

Amendments Nos. 1 and 2 are technical drafting amendments. They replace references to the equivalent division with a division of An Garda Síochána, however so expressed. This is to make it clear it is not necessary to specify or identify a division when amendments are being made in regulations under this section. The words “as the case may be” are also being added to paragraph (e) to reflect that situation.

Amendment agreed to.

Deputy James Browne: I move amendment No. 2:

In page 9, to delete lines 36 to 38 and substitute the following:

“(e) to amend a definition where that definition refers to a Garda district or a specified superintendent to refer to a division of the Garda Síochána (howsoever expressed) or to one or more superintendents or inspectors of the Garda Síochána, as the case may be;”.

Amendment agreed to.

Section 9, as amended, agreed to.

Sections 10 to 27, inclusive, agreed to.

NEW SECTION

Vice Chairman: Amendments Nos. 3 to 8, inclusive, are related. Amendments Nos. 4 to 8, inclusive, are consequential on No. 3. They will all be discussed together.

Deputy James Browne: I move amendment No. 3.

13 OCTOBER 2021

In page 21, after line 34, to insert the following:

“PART 4
AMENDMENT OF ACT OF 2005

Amendment of section 3(1) of Act of 2005

28. Section 3(1) of the Act of 2005 is amended by the insertion of the following definitions:

“ ‘controlled drug’ has the same meaning as it has in section 2 of the Misuse of Drugs Act 1977;

‘psychoactive substance’ means a psychoactive substance within the meaning of section 1 of the Criminal Justice (Psychoactive Substances) Act 2010 to which that Act applies;

‘sample’ means a sample of any of the following taken, or to be taken, from a person:

- (a) urine;
- (b) hair, other than pubic hair;
- (c) oral fluid, including saliva;
- (d) blood;”.”.

Amendment No. 3 adds the definitions of “controlled drug”, “psychoactive substance” and “sample” to the Garda Síochána Act 2005. Amendment No. 4 provides that the Garda Commissioner has the power to perform the functions assigned to him by the regulations designed to establish, maintain and operate the drug-testing regime. Amendment No. 5 provides the Minister with regulation-making power with regard to the establishment, maintenance and operation of the drug-testing regime and provides for who that regime will apply to, namely, applicants to the position of member of the Garda, trainee members and civilian staff of An Garda Síochána.

Amendment No. 6 provides the Minister with a regulation-making power with regard to Garda discipline and ensures any drug test failure or failure to comply with the regulations made to establish, maintain and operate the drug-testing regime will result in disciplinary proceedings. Amendment No. 7 provides for a change to the Schedule of the Garda Síochána Act 2005 which deals with a breach of discipline. The amendment will reflect the fact that intoxication in the context of a breach of discipline will include liquor, controlled drugs or psychoactive substances, as opposed to previously having simply referred to liquor and drugs.

Amendment No. 8 changes the Long Title to facilitate the said amendments being included in the Bill.

Amendment agreed to.

Deputy James Browne: I move amendment No. 4:

In page 21, after line 34, to insert the following:

“Amendment of section 26 of Act of 2005

29. Section 26 of the Act of 2005 is amended by the insertion of the following paragraph after paragraph (a):

“(aa) to perform the functions assigned to him or her by regulations made under section 122(1)(kk) and any associated functions;”.’”.

Amendment agreed to.

Deputy James Browne: I move amendment No. 5:

In page 21, after line 34, to insert the following:

“Amendment of section 122 of Act of 2005

30. Section 122 of the Act of 2005 is amended—

(a) in subsection (1), by the insertion of the following paragraph after paragraph (k):

“(kk) the establishment, maintenance and operation of a regime of testing for controlled drugs and psychoactive substances, which may provide for—

(i) subject to subparagraph (ii), a prohibition on the presence of controlled drugs or psychoactive substances above a specified concentration in a sample,

(ii) the procedures to be followed where a person is exposed to a controlled drug or psychoactive substance in the course of and as a result of his or her functions or employment,

(iii) the taking of samples,

(iv) a prohibition on tampering with a sample,

(v) the persons from whom a sample may be taken for testing,

(vi) the persons who may be permitted to take a sample,

(vii) the information to be provided to a person required to provide a sample,

(viii) matters with regard to the testing and analysis of samples,

(ix) the reasons for testing, which may include—

(I) pre-employment testing,

(II) testing of Garda trainees,

(III) random testing,

(IV) targeted drug testing,

(V) with-cause testing, or

(VI) post-incident testing,

(x) the concentration of a controlled drug or psychoactive substance required to be present to yield a positive result in a sample,

(xi) how samples are to be stored,

(xii) the period during which samples may be stored,

(xiii) the reviewing of test results, and

(xiv) such ancillary and incidental provisions as he or she considers necessary or expedient for the purposes of establishing, maintaining and operating the regime of testing for controlled drugs and psychoactive substances;”,

and

(b) by the insertion of the following subsection after subsection (5):

“(5A) A regulation under section 122(1)(kk) may apply to any or all of the following:

(a) applicants seeking appointment to the position of member of the Garda Síochána;

(b) Garda trainees;

(c) members (including members on probation);

(d) the persons referred to in subparagraphs (ii) to (v) of section 122(5) (b);

(e) members of the civilian staff of the Garda Síochána;

and make different provision for the different persons, or categories, grades or ranks of persons, falling within paragraphs (a) to (e) above.”.”.

Amendment agreed to.

Deputy James Browne: I move amendment No. 6:

In page 21, after line 34, to insert the following:

“Amendment of section 123 of Act of 2005

31. Section 123(2) of the Act of 2005 is amended—

(a) in paragraph (f), by the substitution of “station,” for “station, and”,

(b) in paragraph (g), by the substitution of “performance, and” for “performance.”,

and

(c) by the insertion of the following paragraph after paragraph (g):

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“(h) failure to comply with regulations made under section 122(1) (kk).”.”.

Amendment agreed to.

Deputy James Browne: I move amendment No. 7:

In page 21, after line 34, to insert the following:

“Amendment of Schedule 5 to Act of 2005

32. Schedule 5 to the Act of 2005 is amended, in paragraph 7, by the substitution of “liquor, controlled drugs or psychoactive substances or a combination of liquor, controlled drugs or psychoactive substances” for “liquor or drugs or a combination of liquor and drugs”.”.

Amendment agreed to.

Deputy Thomas Pringle: There is something I wish to bring forward on Report Stage in relation to An Garda Síochána having not complied with obligations under the Garda Síochána Act 2005 in relation to providing Irish-speaking gardaí in Gaeltacht areas. I wish to bring an amendment at Report Stage in relation to that so I want to flag that.

SCHEDULE

Schedules 1 to 4, inclusive, agreed to.

TITLE

Deputy James Browne: Deputy James Browne: I move amendment No. 8:

In page 5, line 20, after “1924;” to insert the following:

“to amend the Garda Síochána Act 2005 by amending Schedule 5 and by creating regulation-making powers in order to make provision for a testing regime of members and certain other persons to detect the presence of controlled drugs or psychoactive substances in samples provided, to prohibit their presence in specified concentrations other than where exposure in the course of functions or employment occurs and to make provision for disciplinary sanctions relating to these matters;”.

This amends the Long Title to allow the previous amendments to be included in the Bill. The previous Title would not have allowed those amendments in relation to drug-testing.

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Message to Dáil

Vice Chairman: In accordance with Standing Order 101, the following message will be sent to the Clerk of the Dáil:

13 OCTOBER 2021

The Select Committee on Justice has completed its consideration of the Garda Síochána (Functions and Operational Areas) Bill 2021, has made amendments thereto and has amended its Title.

Vice Chairman: The Select Committee on Justice is adjourned until Wednesday, 10 November 2021 at 5.30 p.m. for Committee Stage of the Criminal Justice (Mutual Recognition of Custodial Sentences) Bill 2021. I thank the members.

The select committee adjourned at 5.41 p.m. until 5.30 p.m. on Wednesday, 10 November 2021.