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Briefing Paper

General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025: Head 26 - power of An Garda Síochána to order removal of face covering worn in public

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Policy and Legislative Briefing Paper

Abstract

This *Policy and Legislative Briefing Paper* provides an overview of the proposed amendments set out in Head 26 of the General Scheme of the Criminal Law and Civil Law Miscellaneous Provisions Bill 2025. Head 26 proposes to give An Garda Síochána the power to order the removal of face coverings worn in public in certain public order situations. Specifically, the Briefing Paper sets out the policy and legal background to this provision, including the current position in Irish law and the approach in the United Kingdom, as well as examining the specific proposals around this new power for An Garda Síochána.

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Executive Summary

The General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 was published on 6 May 2025 by the Department of Justice, Home Affairs and Migration. The Parliamentary Research Service (PRS) will publish four *Policy and Legislative Briefing Papers* on selected Heads, which cover key legislative proposals in the General Scheme. This *Policy and Legislative Briefing Paper* examines the policy and legislative context for proposed amendments giving An Garda Síochána the power to order the removal of face coverings worn in public, as set out in Head 26 of the General Scheme.

Head 26 of the General Scheme proposes to amend section 8 of the *Criminal Justice (Public Order) Act 1994* (the 1994 Act), which provides that it is an offence for a person to fail to comply with a direction of a member of An Garda Síochána. Specifically, it proposes to extend current Garda powers under section 8 to allow a member of the gardaí to direct a person to remove a face covering where it is being worn in a public place and the member reasonably suspects that it is being worn to intimidate others or to conceal the person's identity in order to commit an offence or hinder the investigation of an offence. The requirement for a member of the gardaí to 'reasonably suspect' involves subjective and objective aspects. This means considering whether the garda did have such a suspicion regarding the person concerned and, if they did, was it reasonable for them to have that suspicion considering the information available to them at the time?

Section 7 of the *Garda Síochána Act 2005* sets out that the function of An Garda Síochána is to provide policing and security, including vetting, services for the State with the objective of several duties including preserving peace and public order. An Garda Síochána are tasked with preserving peace and public order while ensuring an individual's right to freedom of assembly and association, right to freedom of expression and right to privacy are protected. These rights are protected under the Constitution of Ireland, the European Convention on Human Rights, the EU Charter of Fundamental Rights[1] (EUCFR) and international instruments such as the International Covenant on Civil and Political Rights (ICCPR)[2] and the UN Declaration of Human Rights[3]. None of these are absolute rights, which means that they may be restricted by the State in certain circumstances, subject to certain requirements being satisfied, including the existence of a legitimate purpose, necessity and proportionality. The Irish Human Rights and Equality Commission (IHREC) has expressed deep concern over the proposed introduction of

[1] Article 11 of the EUCFR provides for the right to freedom of expression; article 12 provides for freedom of assembly and association.

[2] Article 19 of the ICCPR provides for the right to freedom of thought; article 21 provides for the right to peaceful assembly and article 22 for the right to freedom of association with others.

[3] Article 18 of the UNDHR provides for the right to freedom of thought, conscience and religion; article 19 provides for the right to freedom of opinion and expression and article 20 provides for the right to freedom of peaceful assembly and association.

Head 26, particularly in terms of the threat it poses to the constitutionally protected right to privacy, as well as freedom of expression and assembly and association.[4]

Two significant reviews on public order policing in Ireland have been undertaken – the Garda Inspectorate, 'Public Order Policing A Review of Practices in the Garda Síochána' (GSI Report) published in 2019 and the Policing Authority, 'Review of Public Order Policing' published in 2025. The Review of Public Order Policing found that relevant personnel and the Garda Síochána Legal Section considered that the 1994 Act was robust and sufficient to deal with public order offences. It also considered the legislative proposal captured within Head 26 advising that if enacted, it would require clear guidelines to ensure both Gardaí and the public are aware of circumstances in which removal of a mask might be compelled. The Irish Council for Civil Liberties (ICCL) supported the need for clear guidelines if Head 26 is enacted as set out in their PLS submission on the General Scheme.

In the UK, the Crime and Policing Bill 2025 proposes to change the current legislation to make the simple act of wearing a face covering within a designated area a criminal offence, a move that human rights organisations including Liberty UK have expressed concerns about.

Some of the main concerns raised around the introduction of Head 26 include the broad definition of face covering which could include masks worn for medical, religious or political reasons which could disproportionately impact certain members of society. Members of An Garda Síochána will have to try to distinguish between those wearing face coverings to protect themselves for health reasons, religious, cultural or otherwise and those doing it solely to conceal their identity for criminal purposes.

[4] Irish Human Rights and Equality Commission, 'Submission on the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025', 26 June 2025

Contents

Executive Summary 2
Introduction 5
Background to legislative proposal 6
Policy and legal context 8
Current Garda powers and public order offences 8
Reasonable Suspicion 9
Balancing of Rights 10
Right to privacy 11
Right to freedom of expression 11
Right to freedom of assembly and association 12
Policing Reviews on Public Order 13
Public Order Policing – A Review of Practices in the Garda Síochána 13
Policing Authority Review of Public Order Policing 14
Approach in the United Kingdom 16
Legislative proposal 18
Pre-Legislative Scrutiny 18
General Scheme 19
Conclusion 21

Introduction

The General Scheme of the Criminal Law and Civil Law Miscellaneous Provisions Bill 2025 (General Scheme) was published on 6 May 2025 by the Department of Justice, Home Affairs and Migration. The General Scheme is comprised of 51 Heads which are divided into 14 Parts. Given the disparate and discrete nature of the Bill, covering a wide range of distinct criminal and civil matters, the Parliamentary Research Service (PRS) has elected to produce four separate *Policy and Legislative Briefing Papers* on selected Heads of the General Scheme. These papers will provide an overview of the policy and legislative context to the selected Heads.

This *Policy and Legislative Briefing Paper* provides an overview of the proposed amendments giving An Garda Síochána the power to order the removal of face coverings worn in public, set out in Head 26 of the General Scheme and will consider the following:

- examine the current policy and legal context in Ireland including existing public order powers and relevant policing reviews,
- outline the approach taken in the United Kingdom,
- examine the legislative proposal set out in the Bill and the potential policy and legal implications of this.

The three other *Policy and Legislative Briefing Paper*s will consider the following selected Heads from the General Scheme:

- amends the law on the disclosure of counselling records in sexual offence cases to remove the waiver of the right to non-disclosure so that disclosure hearings must take place in court wherever such records are sought by the accused **(Head 19)**,
- expands and enhances remote hearings for all types of criminal proceedings and international co-operation proceedings, including trials and other contested hearings where the court directs it **(Part 2: Heads 4-11 and Part 4: Heads 15 - 16).**
- prohibits a person offering another person accommodation in exchange for sexual activity in lieu of payment for the accommodation and prohibits a person advertising or causing the advertisement of an offer of accommodation of SFR. It will be a defence to show that a person did not suspect that the advertisement related to this type of accommodation offer **(Head 39)**.

The PRS has also produced a Bill Resource page, which provides links to a wide range of resources on the Bill (available internally only). The PRS intends to publish a *Bill Digest* ahead of Second Stage debate on the Bill, which will provide an overview of the provisions of the Bill in its entirety. The *Bill Digest* will consider the recommendations arising from PLS and if, and to what extent, the PLS recommendations have been incorporated into the published Bill.

Background to legislative proposal

Following an increase in public order incidents including several protests and demonstrations by masked individuals targeting politicians' homes (including the then Taoiseach, Simon Harris)[5], the then Minister for Justice, Helen McEntee, announced in June 2024 that the "Government would change the law to allow gardaí to direct protesters to remove face coverings and masks."[6] This was also in the aftermath of the riots in Dublin on 23 November 2023 where some of the rioters covered their faces, which it was suggested made it much more difficult for Gardaí to identify them and bring them to justice.[7] It was reported by the *Irish Times* in June 2024, that the then Garda Commissioner, Drew Harris, had requested the additional power for gardaí to remove face coverings and had expressed concern around attacks on politicians during the election campaign.[8]

On 15 October 2024, Minister McEntee received Government approval to draft a Bill which would amend the current law to give gardaí the power to require a person to remove a face covering where the garda member believes the face covering is being worn to intimidate others or to conceal the person's identity to frustrate an investigation.[9] Only weeks later, the General Election was called on 8 November 2024 to take place on 29 November 2024 and the legislation was not progressed any further under the 33rd Dáil.

However, the commitment to introducing the amendment was included in the 2025 Programme for Government, under the heading 'Tackling Anti-Social Behaviour', stating that the Government is committed to "tackling the scourge of anti-social behaviour and drug use to ensure safer communities and public spaces."[10] As part of the actions the Government commits to under this heading, it states that it will "[b]an the wearing of face coverings at protests and ask the Joint Oireachtas Committee to consider a ban on protests outside private homes."[11]

On 6 May 2025, the Minister for Justice, Home Affairs and Migration (the Minister) announced the publication of the General Scheme of the Criminal Law and Civil Law Miscellaneous Provisions Bill 2025 (General Scheme). The Minister, commenting at the time of the publication of the General Scheme, advised that the measure was intended to deter disorderly

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[5] See Conor Kane, 'Threats undermine democracy, says O'Gorman after protest outside his home', *RTÉ News*, 19 April 2024; Conor Gallagher and Seanín Graham, ''Hardcore' group of far-right protesters stage demonstration outside Taoiseach's home', *The Irish Times*, 3 May 2024.

[6] Paul Reynolds, 'Govt to amend law on face coverings at protests – McEntee', *RTÉ News*, 28 June 2024.

[7] James Wilson, 'Government consider face mask crackdown after Dublin riots', *Newstalk*, 6 May 2025.

[8] Paul Reynolds, 'Govt to amend law on face coverings at protests – McEntee', *RTÉ News*, 28 June 2024.

[9] Jonathan McCambridge, 'McEntee gets green light for crackdown on face coverings', *Irish Examiner*, 15 October 2024.

[10] Government of Ireland, 'Programme for Government 2025 Securing Ireland's Future', at 118.

[11] Ibid.

conduct, enhance public safety and reinforce law enforcement. He further outlined the rationale for introducing Head 26 stating that:

> *While people have the right to protest and that right must be respected, it is subject to the rights of others in our community. Balancing the right to protest with protecting the safety of others is a complex task for members of An Garda Síochána.*
>
> *It has become apparent that some protesters are covering their faces in an obvious effort to alarm and intimidate individuals in various scenarios or to avoid detection when committing a criminal offence.*[12]

The amendment under Head 26 of the General Scheme proposes to amend section 8 of the *Criminal Justice (Public Order) Act 1994* (the 1994 Act) by inserting new subsections after subsection 1A giving An Garda Síochána the power to order the removal of face coverings worn in public. The Garda member must suspect, with "reasonable cause" that the face covering is being worn to intimidate others or to conceal the person's identity to facilitate the commission of an offence or hinder the investigation of an offence.

In response to a Parliamentary Question on 15 May 2025 regarding forthcoming legislation, including the proposed prohibition of the wearing of face coverings in public, the Minister for Justice, Home Affairs and Migration, Jim O' Callaghan further outlined the scope of the proposed amendment in the following terms:

> *The power applies only when Gardaí reasonably suspect the face covering is used to intimidate or facilitate criminal activity and hinder the investigation of criminal offences. Legitimate uses, such as cultural, medical, or expressive coverings, are unaffected, unless linked to public order concerns.*
>
> *The provision's narrow focus on public safety protects protest rights while addressing harmful conduct to ensure the safety of all involved.*[13]

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[12] Department of Justice, Home Affairs and Migration, 'Minister Jim O'Callaghan secures government approval to progress the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025', *Press Release*, 6 May 2025.

[13] Minister for Justice, Home Affairs and Migration, Jim O' Callaghan, 'An Garda Síochána Dáil Éireann Debate, Thursday', 15 May 2025.

Policy and legal context

Current Garda powers and public order offences

Orange in *Police Powers in Ireland* states that police powers can originate from the common law[14], can be created through legislation or may be given where a person gives consent.[15] Charleton J. giving judgment in *People (DPP) v Quirke* [2023] 1 ILRM 225, observed the following in relation to the limits of police powers:

> *... A power is granted for a purpose and is limited to reasonable use in accordance with the statutory remit and within its confines, and not for harassment or titillation or any other improper purpose...*[16]

Section 7 of the *Garda Síochána Act 2005* sets out that the function of An Garda Síochána is to provide policing and security, including vetting, services for the State with the objective of—

(a) **preserving peace and public order**,

(b) protecting life and property,

(c) vindicating the human rights of each individual,

(d) protecting the security of the State,

(e) preventing crime,

(f) bringing criminals to justice, including by detecting and investigating crime, and

(g) regulating and controlling road traffic and improving road safety.[17]

The *Criminal Justice (Public Order) Act 1994* (the 1994 Act) provides the gardaí with several statutory powers that may be invoked when dealing with the public. Section 8 of the 1994 Act provides An Garda Síochána with enforcement powers to issue a direction to a person to desist from acting contrary to the Act and to leave a particular area. To do so, a member must suspect with reasonable cause that a person:

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[14] "Common law rules are judge made rules and may be modified in accordance with the current policy of the court" – see Murdoch and Hunt's Encyclopaedia of Irish Law. Also Orange, G. (2024) 'Police Powers in Ireland' London: Bloomsbury Professional, at para. 3.02 – "The common law is a body of decisions that have been given by judges over the centuries, where the decisions of later judges tended to follow the precedent that had been established in earlier cases. It is through the accumulation of these decisions that the common law developed into a coherent body of law."

[15] Orange, G. (2024) 'Police Powers in Ireland' London: Bloomsbury Professional, at para. 2.08

[16] *People (DPP) v Quirke* [2023] 1 ILRM 225 at para. 43.

[17] Section 7(1) of the *Garda Síochána Act 2005*. Emphasis added.

- is or has been acting in a manner contrary to the provisions of *section 4*, *5*, *6*, *7* or *9*, or
- without lawful authority or reasonable excuse, is acting in a manner which consists of loitering in a public place in circumstances, which may include the company of other persons, that give rise to a reasonable apprehension for the safety of persons or the safety of property or for the maintenance of the public peace.[18]

It is an offence where the person fails to comply with a direction given by a member of the Garda Síochána, without lawful authority or reasonable excuse, under section 8. Sections 4, 5, 6, 7 and 9 respectively deal with intoxication; disorderly conduct; threatening, abusive or insulting behaviour in public; public distribution/display of threatening, abusive, insulting or obscene material and wilful obstruction. A person convicted of failing to comply with a Garda direction under section 8 is liable on summary conviction to a class D fine, of up to €1,000, or to a maximum term of 6 months in prison, or both.

Reasonable Suspicion

Orange also examines what the requirement for a member of the gardaí to 'reasonably suspect' involves, noting that there is a subjective and an objective aspect to it. This means considering whether the garda did have such a suspicion regarding the person concerned and, if they did, was it reasonable for them to have that suspicion considering the information available to them at the time?[19] A reasonable suspicion does not have to be certain[20] but it requires some element of reasoning or judgment,[21] it must be *bona fide*[22] and "must be capable of being justified by factors that are in existence at the time the power is invoked and must be capable of being explained if it is scrutinised."[23]

Orange also notes that even where a suspicion is based on an interpretation of facts that are later found to be mistaken, this will not necessarily make the suspicion invalid, once the suspicion was genuinely held and based on an interpretation of the facts that was reasonable in all of the circumstances.[24] He also asserts that the threshold for establishing the existence of a reasonable suspicion is much lower than that needed for a trial.[25] Although information

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[18] Section 8 (1)(a) and (b) of the *Criminal Justice (Public Order) Act 1994*.

[19] Orange, G. (2024) 'Police Powers in Ireland' London: Bloomsbury Professional, at para. 4.09.

[20] Ibid at para. 4.12.

[21] Orange, G. (2024) 'Police Powers in Ireland' London: Bloomsbury Professional, at para. 4.13.

[22] Ibid.

[23] Orange, G. (2024) 'Police Powers in Ireland' London: Bloomsbury Professional, at para. 4.13.

[24] Ibid.

[25] Orange, G. (2024) 'Police Powers in Ireland' London: Bloomsbury Professional, at para. 4.16.

must be available to justify the suspicion, it does not have to be the type that could be used as evidence in the course of a trial.[26]

A statutory definition of 'reasonable suspicion' is proposed in Head 2(2) of the General Scheme of the Garda Síochána (Powers) Bill 2022. This will not change the legal definition of a 'reasonable suspicion' as the proposed definition reflects the current common law interpretation:

> *... a person reasonably suspects something at a relevant time if he or she, acting in good faith, has grounds at the time for the suspicion and those grounds, when judged objectively, are reasonable.*[27]

At the time of writing, the Garda Síochána (Powers) Bill had not been published. The General Scheme proposes a number of significant amendments to the existing law on police powers, including the introduction of a single power of arrest; increased powers, regulation and recording relating to powers to stop and search and the introduction of statutory codes of practice to provide guidance for Gardaí in using their powers under the Bill.

Balancing of Rights

In the submission from the Irish Human Rights and Equality Commission (IHREC) to the Joint Committee on Justice, Home Affairs and Migration (Joint Committee) on the General Scheme, IHREC emphasised that [p]eaceful protest is an important form of the exercise of the rights to freedom of peaceful assembly, of expression, of association and of participation in the conduct of public affairs."[28] None of these are absolute rights, which means that they may be restricted by the State in certain circumstances (such as public order), subject to certain requirements being satisfied, including the existence of a legitimate purpose, necessity and proportionality. Therefore, Head 26 involves a balancing of these rights: - the individual's right to freedom of assembly and association, right to freedom of expression and right to privacy against the duty of an Garda Síochána to preserve peace and public order.

The rights engaged by Head 26 are protected by the Constitution of Ireland, the European Convention on Human Rights, the EU Charter of Fundamental Rights[29] (EUCFR) and international instruments such as the International Covenant on Civil and Political Rights

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[26] Ibid at para. 4.17.

[27] Head 2(2) of the General Scheme of the Garda Síochána (Powers) Bill 2022.

[28] Irish Human Rights and Equality Commission, 'Submission on the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025', 26 June 2025 at 18.

[29] Article 11 of the EUCFR provides for the right to freedom of expression; article 12 provides for freedom of assembly and association.

(ICCPR)[30] and the UN Declaration of Human Rights.[31] The following section outlines the relevant rights as protected under the Irish Constitution and the ECHR.

Right to privacy

The right to privacy is one of the unenumerated personal rights that have been found within Article 40.3.1°–2° of the Constitution.[32] It is also protected by Article 8 of the European Convention on Human Rights (ECHR), which has been indirectly incorporated into Irish law by the *European Convention on Human Rights Act 2003*. It is a qualified right which means that it "may be restricted by the constitutional rights of others, by the requirement of the common good and is subject to the requirements of public order and morality…".[33] In IHREC's submission on the General Scheme, it expressed deep concern over the proposed introduction of Head 26, particularly in terms of the threat it posed to the constitutionally protected right to privacy as well as freedom of expression and assembly and association.[34] In particular IHREC suggest that there would be privacy concerns for individuals who wished to protest anonymously. Such an instance would be where people want to protest in relation to contentious matters and are concerned about the negative implications for their employment if they are recognised while protesting.[35]

Right to freedom of expression

The right to freedom of expression is protected under Article 40.6.1.i of the Irish Constitution and Article 10 of the ECHR. Under Article 40.6.1°, the right of citizens to express freely their convictions and opinions may not be used to undermine public order or morality or the authority of the State. In *Ibragimova v. Russia,*[36] the European Court of Human Rights held that Russia had violated the applicant's right to freedom of expression. In that instance, the applicant had protested against the conviction of several members of a political activist group

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[30] Article 19 of the ICCPR provides for the right to freedom of thought; article 21 provides for the right to peaceful assembly and article 22 for the right to freedom of association with others.

[31] Article 18 of the UNDHR provides for the right to freedom of thought, conscience and religion; article 19 provides for the right to freedom of opinion and expression and article 20 provides for the right to freedom of peaceful assembly and association.

[32] In *McGee v The Attorney General* [1973] IR 284 it was found that this right is implicitly protected by the unenumerated rights which flows from Article 40.3 of the Irish Constitution.

[33] *Kennedy v Ireland* [1987] IR 587 at p 592 to 593.

[34] Irish Human Rights and Equality Commission, 'Submission on the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025', 26 June 2025 at 17.

[35] Irish Human Rights and Equality Commission, 'Submission on the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025', 26 June 2025 at 19.

[36] Case No. 68537/13 (30 November 2022).

while standing in a public place holding a sign in support of this group and wearing a balaclava. The Court noted that there is no general prohibition in Russian law on face covering in public and held that:

> *... the applicant's conviction for an administrative offence consisting merely in wearing a balaclava during her solo demonstration, in the absence of any balancing exercise by the domestic courts, constituted a disproportionate interference with her freedom of expression.*[37]

The national courts had failed to assess the peaceful nature of the solo demonstration; the lack of intention to hide her identity; and the lack of any indication that either public order or the rights of others were affected by her short solo protest action.[38]

Right to freedom of assembly and association

The right to freedom of assembly and association is protected under Article 40.6.1.ii of the Constitution and article 11 of the ECHR. There are limitations to this Constitutional right, including legislation such as the 1994 Act which replaced the common law offences of riot, rout, unlawful assembly and affray with three statutory offences of riot, violent disorder and affray.[39] Section 14 of the 1994 Act provides that where 12 or more persons present together at any place (whether in public or private) use or threaten to use unlawful violence for a common purpose and their conduct, taken together, would cause an average reasonable person present at that place to fear for his or another person's safety, then each person using unlawful violence shall be guilty of riot. Section 15 provides that the offence of violent disorder applies where three or more persons use or threaten to use unlawful violence in such circumstances, while section 16 provides that the offence of affray consists of the use or threatened use of unlawful violence by two or more persons towards each other where, again, the conduct of such persons taken together is such as would cause an average reasonable person present to fear for his or another person's safety.

In the leading constitutional law text, 'Kelly: The Irish Constitution', Hogan et al. observe that to achieve a better balance between the individual's right of assembly and the power of the State to limit it, "the Constitution Review Group recommended that Article 40.6.1º.ii be replaced with a provision modelled on art 11 of the European Convention on Human Rights."[40]

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[37] Ibid at para. 40.

[38] Case No. 68537/13 (30 November 2022) at para.36.

[39] Hogan et al. (2018) 'Kelly: The Irish Constitution' at 7.6.150.

[40] Hogan et al. (2018) 'Kelly: The Irish Constitution' at 7.6.169.

Policing Reviews on Public Order

To date, two significant reviews on public order policing in Ireland have been undertaken. The following section provides an overview of these reviews particularly in terms of their relevance to the proposed legislative amendment under Head 26.

Public Order Policing – A Review of Practices in the Garda Síochána

In October 2018, the Policing Authority,[41] under section 117(2)(c) *Garda Síochána Act 2005*, requested the Garda Inspectorate to examine the effectiveness of public order policing by the Garda Síochána.[42] This Review 'Public Order Policing - A Review of Practices in the Garda Síochána' (GSI Report) focused on two particular reviews of public order-related incidents: –

- first review ("An Cosán review") which involved the Tánaiste being prevented from leaving an event for several hours, along with several others, in November 2014. A large number of garda members were assaulted and garda vehicles and equipment damaged.
- North Frederick Street review which involved a group of protestors, operating under the banner "Take Back the City", occupying a building where the owner had obtained an Order to vacate the property. Garda Síochána were present to prevent a breach of the peace and faced negative publicity around the policing response.[43]

The GSI report advises that it was not intended to be a review of these incidents but instead focused on future contingency planning and the response of Garda Síochána to incidents "that have the potential to undermine wider public confidence in policing as a result of serious breakdown in public order."[44] In particular, it states that the inspection was done to assess the effectiveness of policing with reference to international best practice. The report made 19 recommendations[45] across four key areas:

1. strategy, governance and accountability,

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[41] Following the enactment of the *Policing, Security and Community Safety Act 2024*, the Policing Authority was dissolved on 1st April 2025 and superseded by the new Policing and Community Safety Authority (PCSA). The PCSA consolidates oversight functions of the Policing Authority and the inspection functions of the Garda Síochána Inspectorate into one body.

[42] Garda Síochána Inspectorate, (April 2029) 'Public Order Policing - A Review of Practices in the Garda Síochána' at 12.

[43] Garda Síochána Inspectorate, (April 2019) 'Public Order Policing - A Review of Practices in the Garda Síochána', at 12-13.

[44] Garda Síochána Inspectorate, (April 2019) 'Public Order Policing - A Review of Practices in the Garda Síochána', at 13.

[45] This was counted as 20 recommendations in the Policing Authority, (August 2024) 'Review of Public order Policing' as one of the recommendations had two parts.

2. capability and capacity,
3. operational delivery and
4. post-incident management.

Although the report did not specifically deal with face coverings, one of the findings it made included that "a greater focus should be put on human rights and the Code of Ethics in the public order incident command policy, procedures and guidance."[46] The Inspectorate also recommended that "event sergeants and public order commanders have ready access to human rights legal advice when planning events."[47]

Policing Authority Review of Public Order Policing

The Policing Authority undertook a 'Review of Public Order Policing' during 2024 in response to a request by the Minister for Justice following the riots in Dublin on 23 November 2023. The Review, published in March 2025, does not review those events but instead looks at the state of public order policing in an Garda Síochána generally.[48] The review found that while progress has been made since the publication of the GSI Report in 2019, some of the key recommendations remain incomplete, relate to "improvements needed in the central coordination, management and governance of public order policing."[49]

While the GSI report did not deal specifically with the issue of face coverings, this Review did examine the issue. It should be noted that the GSI Report was published pre-Covid and the environment since then has notably changed. This includes the impact of social media in quickly mobilising large numbers of people, as well as the misinformation and disinformation that can be spread online which can lead to real-life actions, including acts of violence.[50] The Review also observed that during the Covid-19 lockdowns, the Garda Síochána were "the public face of the constraints put on the ordinary patterns of life. This drew the resentment of some with accompanying protests."[51]

From initial engagement with the Garda Síochána Legal Section and with operational public order Gardaí, the Review stated that current legislation (the 1994 Act) was described as robust and it reported that it "would appear that the view exists that current legislation is sufficient to

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[46] Garda Síochána Inspectorate, (April 2019) 'Public Order Policing - A Review of Practices in the Garda Síochána', at 7.

[47] Recommendation 12. Ibid at 9.

[48] Policing Authority, (August 2024) 'Review of Public order Policing' at 5.

[49] Policing Authority, (August 2024) 'Review of Public order Policing' at 5.

[50] Ibid at 10.

[51] Policing Authority, (August 2024) 'Review of Public order Policing' at 10.

provide for an appropriate policing response that can keep people safe while vindicating human rights."[52]

The Review also considered the issue of potential future legislation to establish a legal basis to require individuals who have breached section 8 of the 1994 Act to remove face coverings. It recognised the complexity of this in ensuring that "it does not disproportionately impact on the right to privacy."[53] It observed that the Authority's understanding was that such a legislative proposal would only require the removal of a face covering if the individual breaches section 8 of the 1994 Act, and the intention was not to prevent individuals from covering their face while participating in a protest.[54]

Notably, the Review asserted that this legislative proposal "will require clear guidelines for Garda members and for the public as to the parameters within which removal of a mask might be compelled."[55] It also suggested that further consideration will be needed to assess how the legislation could interact with future legislation on Facial Recognition Technology (FRT).[56] The Garda Síochána (Recording Devices) (Amendment) Bill 2025 was brought to Second Stage on Thursday 18 December 2025 and a Bill Digest is available from the Parliamentary Research Service. The PRS has also produced a Policy and Legislative Briefing Paper and Bill Resource Page (only available internally) on the Garda Síochána Recording Devices (Amendment) Bill.

[52] Ibid at 30.

[53] Policing Authority, (August 2024) 'Review of Public order Policing' at 30.

[54] Ibid.

[55] Policing Authority, (August 2024) 'Review of Public order Policing' at 30

[56] Ibid.

Approach in the United Kingdom

Currently, in England, Scotland and Wales, under section 60AA of the *Criminal Justice and Public Order Act 1994*[57], a police officer of the rank of inspector or above can authorise (in a specific area for up to 24 hours, extendable for a further 24 hours if 'expedient') any uniformed police officer to require an individual to remove an item that they reasonably believe is being worn to conceal their identity. To give an authorisation, the senior police officer must reasonably believe that activities may take place in their police area that are likely to involve offences being committed and an authorisation is 'expedient' to prevent or control these activities. Such authorisation must be written, signed by the senior officer, and specify the grounds, area, and time period.

It is a criminal offence to fail to remove a face covering when required by a uniformed police officer under section 60AA and if convicted, it is punishable with up to one (1) months' imprisonment, a fine of up to £1,000 or both. Liberty, a UK human rights organisation, advise that such authorisation took place in relation to a Palestine solidarity protest on 14 October 2023, and they received reports that several protesters were arrested for failing to remove their face coverings, including keffiyehs.[58]

The Crime and Policing Bill 2025, which is currently going through the Houses of Parliament in the UK, contains a "wide-ranging scope of provisions aiming at tackling violence, antisocial behaviour and enhancing public confidence in the criminal justice system".[59] Clause 118 of the Bill creates an offence of "wearing or otherwise using an item that conceals their identity or another person's identity" within a public place that is in a locality designated through the procedure outlined in Clause 119. Clause 118 proposes to change the current criminal power to make the simple act of wearing a face covering within a designated area a criminal offence.

Liberty have expressed concerns about the Crime and Policing Bill 2025, warning that it will "have a disproportionate impact on marginalised groups"[60] who wish to exercise their right to freedom of expression and peaceful protest including disabled persons and those wearing face coverings for religious or cultural reasons such as Muslim women. Liberty also advises that some people may wish to cover their faces at protests to protect their privacy. It states that:

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[57] The *Criminal Justice and Public Order Act 1994* does not apply to Northern Ireland.

[58] Liberty, 'The UK Government's plan to ban face coverings at protests ' (accessed 11 December 2025).

[59] 'Nathan Whetton, 'Legislating against concealing identity at protests', UK Constitutional Law Association (accessed 11 December 2025).

[60] Liberty, 'The UK Government's plan to ban face coverings at protests ' (accessed 11 December 2025).

> *Giving the police sweeping powers to ban face coverings at protests will leave people feeling unsafe and force them to choose between getting arrested and standing up for issues they care about.*[61]

The Irish Council for Civil Liberties asserted in their submission on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill warned that "the UK experience demonstrates how these proposed changes are a slippery slope towards additional policies which directly attack and infringe upon the right to protest."[62] During the PLS hearing, IHREC also referred to the situation in the United Kingdom, noting that initially legislation was introduced to deal with face coverings being used to evade justice or intimidate and further proposals had been introduced to make wearing a mask itself a criminal offence in and of itself.[63]

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[61] Liberty, 'The UK Government's plan to ban face coverings at protests ' (accessed 11 December 2025).

[62] ICCL Submission on the General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025', June 2025 at 5.

[63] Mr Liam Herrick, Chief Commissioner of IHREC, Joint Committee on Justice, Home Affairs and Migration, 'General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025: Discussion', Tuesday, 30 Sep 2025.

Legislative proposal

Pre-Legislative Scrutiny

The Joint Committee on Justice, Home Affairs and Migration invited submissions from stakeholders on the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 and held a hearing with several stakeholders on 30 September 2025. The Joint Committee published its Pre-legislative scrutiny report on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 on 13 November 2025 and made two recommendations regarding Head 26 as follows:

> 14. The Committee recommends Head 26 is subjected to extensive human rights scrutiny and review. The review should include an impact assessment on how this provision might affect individuals who wear face coverings for legitimate reasons such as health, religious, cultural and solidarity purposes.
>
> 15. The Committee recommends that a review is conducted to assess the intended impact of the provisions set out in Head 26, and to ascertain if such powers are already proscribed within the Criminal Justice (Public Order) Act, 1994 or other statutory provisions.[64]

These recommendations and the extent to which, if any, are incorporated into the published Bill will be considered in the Parliamentary Research Service's forthcoming Bill Digest. Interestingly, the European Union Agency for Fundamental Rights recently published 'Better legislation – Human rights impact assessments in lawmaking', which examines how human rights impact assessments (HRIAs) are built into lawmaking across the EU and its Member States. One of the key findings of the report was that "rarely do impact assessments at the national level explicitly and systematically address human rights concerns." The report emphasised that:

> *Human rights impact assessments are not merely advisable; they are indispensable. They help us look ahead and understand how new laws might affect people before those laws are passed. They make governments more accountable and ensure decisions are fair and trustworthy. Alongside this, civil society and national human rights institutions play a key role in flagging potential human rights violations early in the legislative process.*[65]

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[64] Joint Committee on Justice, Home Affairs and Migration, 'Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025', November 2025 at 8.

[65] European Union Agency for Fundamental Rights, 'Better legislation – Human rights impact assessments in lawmaking', December 2025 at 4.

General Scheme

Joint Committee on Justice, Home Affairs and Migration debate - Tuesday, 30 Sep 2025

Head 26 proposes to extend current Garda powers to allow a member of the gardaí to direct a person to remove a face covering where it is being worn in a public place and the member reasonably suspects that it is being worn to intimidate others or to conceal the person's identity in order to commit an offence or hinder the investigation of an offence. As outlined above, the Minister has advised that this power would be for use during public protests and will not impact upon legitimate uses of face coverings, such as cultural, medical, or expressive.

One of the concerns raised during PLS included the broad definition of face covering in Head 26 which could include items such as medical masks, face coverings worn for religious expression, as well as face coverings worn in political support. It was suggested that this could disproportionately impact certain members of society, such as Muslim women and physically vulnerable individuals including disabled people who may feel uncomfortable being in public places without wearing a face covering. During the PLS hearing, Liam Herrick (Chief Commissioner of IHREC) declared that the danger with the current proposed legislative amendment is that it "might capture a whole other category of behaviour, which should not be criminalised."[66] Stakeholders also observed that Members of An Garda Síochána will have to try to distinguish between those who are "wearing face coverings to conceal their identity for criminal purposes and those who are wearing face coverings to protect themselves for health reasons, religious, cultural or otherwise."[67]

In addition, submissions were given by various stakeholders during PLS around Head 26, with several expressing deep concern, noting that it was:

> *... highly problematic as it could have a potentially chilling effect on free speech and the freedom of expression on individuals who wear face coverings during peaceful protest, in that it may dissuade such individuals from enjoying their fundamental right to protest.*[68]

It has also been suggested that the current law under the 1994 Act may already cover the behaviour Head 26 seeks to address, a view expressed in submissions by several stakeholders

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[66] Mr Liam Herrick, Chief Commissioner of IHREC, Joint Committee on Justice, Home Affairs and Migration, 'General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025: Discussion', Tuesday, 30 Sep 2025.

[67] 'ICCL Submission on the General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025', June 2025 at 5.

[68] Joint Committee on Justice, Home Affairs and Migration, 'Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025', November 2025 at 18.

including the Bar of Ireland[69] and as highlighted above in the Review of Public Order Policing by operational public order police and the Garda Síochána Legal section.

During the PLS hearing, Deputy Tom Brabazon raised the issue of youths engaging in anti-social and criminal behaviour while wearing masks so that Gardaí cannot identify them or pursue prosecution and queried how this could be addressed without the introduction of Head 26. In response, Liam Herrick, Chief Commissioner of IHREC stated that:

> *... the fact that young people are committing offences, such as selling illegal substances, breaking road traffic laws and so on, is probably a much greater problem than the fact they are wearing face coverings. I absolutely agree that there is a real question about reviewing the issue of public order and crime in the city centre at the moment. This proposal does not seem to address any of that.*[70]

Additionally, unlike the current law in the UK and the proposed Crime and Policing Bill 2025 outlined above, the text of the General Scheme does not appear to require any senior officer authorisation. Instead, it relies upon the discretion of individual garda members. This may raise concerns around the oversight and management of the power of individual members of the gardaí to direct the removal of face coverings, specifically in terms of the protection of fundamental human rights.

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[69] See Bar Council of Ireland, 'Submission to Oireachtas Joint Committee on Justice, Home Affairs and Migration: General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025', 26 June 2025 and Joint Committee on Justice, Home Affairs and Migration, 'General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025: Discussion', Tuesday, 30 Sep 2025.

[70] Mr Liam Herrick, Chief Commissioner of IHREC, Joint Committee on Justice, Home Affairs and Migration, 'General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025: Discussion', Tuesday, 30 Sep 2025.

Conclusion

The General Scheme of the Criminal Law and Civil Law Miscellaneous Provisions Bill 2025 was published on 6 May 2025 and proposes to make several amendments to both criminal and civil law. Head 26 of the General Scheme proposes to give An Garda Síochána the power to order the removal of face coverings worn in public by amending section 8 of the *Criminal Justice (Public Order) Act 1994* (the 1994 Act) which sets out the offence where a person fails to comply with a direction of a member of An Garda Síochána. The member must suspect with reasonable cause that a person is acting contrary to *section 4*, *5*, *6*, *7* or *9* of the Act or acting in a way which gives rise to a reasonable apprehension for the safety of persons, the safety of property or for the maintenance of the public peace.[71]

As has been outlined in this Briefing Paper, one of the functions of An Garda Síochána is to provide policing and security, including preserving peace and public order which must be balanced against the qualified rights of privacy, freedom of expression and freedom of assembly and association. While the Minister for Justice, Home Affairs and Migration, Jim O' Callaghan has advised that Head 26 has a narrow focus that protects the right to protest, concerns have been raised by various bodies including IHREC and ICCL of the potential to deter peaceful protests and a disproportionate impact on certain groups such as those who wear face coverings for medical, religious or cultural reasons as well as political solidarity.

In its PLS Report, the Joint Committee recommended an extensive human rights scrutiny and review, including an impact assessment on certain groups who wear face coverings for legitimate reasons such as health, religious, cultural and solidarity purposes. It also called for a review considering Head 26's intended impact and if such powers already exist under the 1994 Act or other legislation. It remains to be seen if those reviews will be undertaken before the Bill is published and proceeds to Second Stage.

[71] Section 8 (1)(a) and (b) of the *Criminal Justice (Public Order) Act 1994*.