



**BILLE AN GHARDA SÍOCHÁNA (LEASÚ) (UIMH. 3), 2014
GARDA SÍOCHÁNA (AMENDMENT) (NO. 3) BILL 2014**

EXPLANATORY MEMORANDUM

Introduction

The main purpose of this Bill is to amend the Garda Síochána Act 2005 to expand the remit and powers of the Garda Síochána Ombudsman Commission (GSOC), which is the independent body responsible for receiving and dealing with complaints made by members of the public concerning the conduct of members of the Garda Síochána. Amendments are also being made to further legislation in respect of the exercise of certain police powers by GSOC.

The Bill is a significant element of the Government's comprehensive programme of justice reform and, in summary, it provides primarily for:

- the inclusion, for the first time, of the Garda Commissioner within the investigative remit of GSOC;
- the conferral of additional police powers on GSOC for criminal investigation purposes;
- greater autonomy for GSOC in examining Garda practices, policies and procedures; and
- the ability of the Garda Síochána Inspectorate to carry out inspections on its own initiative without the need for the prior approval of the Minister for Justice and Equality.

Main provisions of the Bill

Section 1 is a standard provision and defines "Principal Act" as meaning the Garda Síochána Act 2005.

Sections 2 and 3 contain technical amendments to section 67(2)(e) and section 74(3) of the Principal Act arising from the proposed insertion of a new section 102B by *section 7* of this Bill.

Section 4 extends the general time limit for making a complaint to GSOC from six to twelve months. This does not alter the current position under which it is open to GSOC to extend the time limit if it considers that there are good reasons for doing so.

Section 5 substitutes a new definition of "enactment" in section 98(5) of the Principal Act. At present section 98(5) prevents GSOC from exercising police powers under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 and the Criminal Justice (Surveillance) Act 2009. The new definition

removes these restrictions and the appropriate functions will be available to GSOC in criminal investigations. This will be fully subject to the conditions and safeguards that apply under the 1993 and 2009 Acts. The necessary consequential amendments are provided for in *sections 12 and 13* of this Bill.

Section 6 amends section 102 of the Principal Act which is concerned with a number of situations where an investigation can be undertaken by GSOC without reference to a complaint.

Paragraph (a) broadens the scope for the Minister to refer a matter to GSOC for investigation, in the public interest, under section 102(5) of the Principal Act. This will now be possible in relation to any matter that gives rise to a concern that a Garda member may have committed an offence or behaved in a manner that would justify disciplinary proceedings.

Paragraph (b) inserts a new subsection (5A) into section 102 of the Principal Act and it confirms that GSOC can carry certain investigations where—

- the identity of the member of the Garda Síochána concerned may not be known when the investigation is undertaken, or
- the offence or behaviour concerned may also involve or have involved a person who is not a member of the Garda Síochána.

These are issues which have been identified as ones which could usefully be clarified.

Section 7 inserts a new section 102B into the Principal Act. This has the effect of bringing the Garda Commissioner within the scope of GSOC investigations, for the first time. *Subsection (1)* enables GSOC to investigate, if it appears to it desirable in the public interest to do so and subject to the consent of the Minister, any matter that gives rise to a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct. *Subsection (2)* of the new section allows the Minister, if he or she considers it desirable in the public interest to do so, to request the Ombudsman Commission to investigate any matter that gives rise to a concern that the Garda Commissioner may have done anything referred to in subsection (1), and the Commission is required to investigate that matter. If the Minister refuses to consent to an investigation which GSOC has sought to initiate in respect of the Commissioner, he or she will be required, under *subsection (3)*, to provide reasons for that refusal. *Subsections (4) and (5)* are provisions necessary to facilitate the operation of the section. In particular, adaptations are being made to the Principal Act to ensure that GSOC will have the necessary powers to undertake an investigation involving the Commissioner.

Section 8 makes provision for consequential amendments to section 103 of the Principal Act, which deals with keeping certain persons informed in relation to GSOC investigations, to take account of the insertion of the new section 102B under *section 7*.

Section 9 requires the Garda Commissioner to ensure that information to be provided by the Garda Síochána to GSOC for the purposes of an investigation will be supplied as soon as practicable.

Section 10 replaces section 106 of the Principal Act which is concerned with the examination by GSOC of certain Garda practices and procedures. The new section contains a provision at *subsection*

(1)(a) which allows GSOC, for the first time, to carry out such an examination on its own initiative. Currently it can only do this when requested by the Minister. *Subsection (1)(b)* also enables the Minister to request GSOC to carry out an examination. *Subsection (2)* obliges GSOC to notify the Garda Commissioner of a pending examination, the reasons for the examination and the practice, policy or procedure to be examined. *Subsection (3)* requires GSOC to provide a report to the Minister in relation to the examination and to supply a copy of the report to the Garda Commissioner. *Subsection (4)* requires the Minister to lay the report before both Houses of the Oireachtas. This requirement is subject to the possible exclusion of certain matters in accordance with *subsection (5)*.

Section 11 amends section 117(2) of the Principal Act to enable the Garda Síochána Inspectorate to conduct, on its own initiative or at the request of the Minister, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána. At present the Inspectorate can only conduct such an inspection or inquiry with the prior consent of the Minister.

Section 12 contains a set of amendments to the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 which are necessary to enable GSOC to undertake the interception of communications for the purposes of a criminal investigation. The approach adopted is that a GSOC investigating officer will have the powers that would be available to the Garda Síochána in the same circumstances. This will only be the situation where a criminal offence is being investigated by GSOC under the Principal Act. In addition the conditions and safeguards contained in the 1993 Act will operate.

Section 13 provides for amendments to the Criminal Justice (Surveillance) Act 2009 to enable GSOC to carry out surveillance where it is necessary in connection with a criminal investigation concerning an arrestable offence. In this area GSOC will be in the same position as the Garda Síochána for the purposes of conducting a criminal investigation.

Section 14 sets out the short title, collective citation and commencement provisions for the Bill.

Financial Information

The proposed new arrangements under the Bill will expand the powers of GSOC and the Garda Inspectorate. Currently it is not possible to quantify the extent to which this will require further resources and the matter will be kept under on-going review.

*An Roinn Dlí agus Cirt agus Comhionannais,
Lúnasa, 2014.*