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*Number 20 of 2005*

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**GARDA SÍOCHÁNA ACT 2005**

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[2005.]

*Garda Síochána Act 2005.*

[No. 20.]

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*Number 20 of 2005*

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## **GARDA SÍOCHÁNA ACT 2005**

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AN ACT TO MAKE FURTHER AND BETTER PROVISION IN RELATION TO THE GARDA SÍOCHÁNA AND, IN PARTICULAR, TO CONSOLIDATE WITH AMENDMENTS CERTAIN ENACTMENTS RELATING TO THE GARDA SÍOCHÁNA, TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS COIMISIÚN OMBUDSMAN AN GHARDA SÍOCHÁNA OR, IN ENGLISH, THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION FOR THE PURPOSES OF ENSURING OPENNESS, TRANSPARENCY AND ACCOUNTABILITY IN THE PROCESS BY WHICH COMPLAINTS AGAINST THE GARDA SÍOCHÁNA ARE INVESTIGATED AND ALSO FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS CIGIREACHT AN GHARDA SÍOCHÁNA OR, IN ENGLISH, THE GARDA SÍOCHÁNA INSPECTORATE FOR THE PURPOSE OF ACHIEVING AND MAINTAINING THE HIGHEST LEVELS OF EFFICIENCY AND EFFECTIVENESS IN THE OPERATION AND ADMINISTRATION OF THE GARDA SÍOCHÁNA, AND TO PROVIDE FOR RELATED MATTERS.

[10th July, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### PART 1

#### PRELIMINARY MATTERS

1.—This Act may be cited as the Garda Síochána Act 2005. Short title.

2.—(1) This Act comes into operation on the day that the Minister may, by order, appoint. Commencement.

(2) Different days may be appointed under this section, by one or more than one order, for different purposes or different provisions of this Act and, in relation to the repeals effected by *section 4*, for the repeal of different provisions of the enactments referred to in *Schedule 1* or for the repeal for different purposes of those enactments.

Interpretation.

3.—(1) In this Act, unless the context otherwise requires—

“Committee of Public Accounts” means the committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General;

“complaint” means a complaint made under *Part 4*;

“Disciplinary Regulations” means—

(a) the 1989 Regulations, as amended under *section 128*, for as long as they continue to be in force under that section, or

(b) any regulations in force under *section 123*;

“document” means any book, record or other written or printed material in any form, including information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form;

“establishment day” means the day appointed under *section 63*;

“Garda Commissioner” means the Commissioner of the Garda Síochána;

“functions” includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

“joint policing committee” means a committee established under *section 36*;

“member”, in relation to the Garda Síochána, means—

(a) a member of any rank (including the Garda Commissioner) appointed under *Part 2* or under an enactment repealed by this Act, and

(b) a reserve member,

but does not include a member of the civilian staff of the Garda Síochána;

“Minister” means the Minister for Justice, Equality and Law Reform;

“Ombudsman Commission” means the Garda Síochána Ombudsman Commission established under *section 64*;

“prescribed” means prescribed by regulation;

“regulations” means regulations continued in force under this Act or made by the Minister under this Act;

“1989 Regulations” means the Garda Síochána (Discipline) Regulations 1989 (S.I. No. 94 of 1989);

“reserve member” means a person appointed under *section 15* as a reserve member of the Garda Síochána.

(2) In this Act—

- (a) a reference to a section, Chapter, Part or Schedule is to a section, Chapter or Part of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any other enactment is to that enactment as amended by or under any other enactment, including this Act, unless the context otherwise requires.

4.—Each enactment specified in *Schedule 1* is repealed to the extent specified in *column (3)* of that Schedule. Repeals.

5.—The expenses incurred in respect of the Garda Síochána under this Act and any other expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of money provided by the Oireachtas. Expenses.

## PART 2

### GARDA SÍOCHÁNA

#### CHAPTER 1

##### *General*

6.—(1) The police force called the Garda Síochána continues in being under this Act as a police service. Continuation of Garda Síochána.

(2) The Government may continue to maintain, equip and pay the Garda Síochána.

7.—(1) The function of the Garda Síochána is to provide policing and security services for the State with the objective of— Function of Garda Síochána.

- (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.

(2) For the purpose of achieving the objective referred to in *subsection (1)*, the Garda Síochána shall co-operate, as appropriate, with

other Departments of State, agencies and bodies having, by law, responsibility for any matter relating to any aspect of that objective.

(3) In addition to its function under *subsection (1)*, the Garda Síochána and its members have such functions as are conferred on them by law including those relating to immigration.

(4) This section does not affect any powers, immunities, privileges or duties that members of the Garda Síochána have by virtue of any other enactment or at common law.

(5) This section is not to be taken to confer on any person a right in law that he or she would not otherwise have to—

- (a) require the Garda Síochána to perform a function or provide a service referred to in this section or to desist from any action, or
- (b) seek damages for a member of the Garda Síochána's performance of, or failure to perform, such function or for his or her provision of, or failure to provide, such service.

Prosecution of offences by members of Garda Síochána.

**8.—(1)** No member of the Garda Síochána in the course of his or her official duties may institute a prosecution except as provided under this section.

(2) Subject to *subsection (3)*, any member of the Garda Síochána may institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of the Director of Public Prosecutions.

(3) In deciding whether to institute and in instituting or conducting a prosecution, a member of the Garda Síochána shall comply with any applicable direction (whether of a general or specific nature) given by the Director of Public Prosecutions under *subsection (4)*.

(4) The Director of Public Prosecutions may give, vary or rescind directions concerning the institution and conduct of prosecutions by members of the Garda Síochána.

(5) Directions under *subsection (4)* may be of a general or specific nature and may, among other things, prohibit members of the Garda Síochána from—

- (a) instituting or conducting prosecutions of specified types of offences or in specified circumstances, or
- (b) conducting prosecutions beyond a specified stage of the proceedings.

(6) If a prosecution is instituted or conducted by a member of the Garda Síochána in the name of the Director of Public Prosecutions—

- (a) the member is presumed, unless the contrary is proved, to have complied with this section and any applicable direction given by the Director under this section, and
- (b) nothing done by the member in instituting or conducting the prosecution is invalid by reason only of the member's failure to comply with this section or that direction.

(7) Nothing in this section—

- (a) precludes the Director of Public Prosecutions from, at any stage of the proceedings, assuming the conduct of a prosecution instituted by a member of the Garda Síochána, or
  - (b) authorises a member of the Garda Síochána to institute a proceeding without the consent of the Director of Public Prosecutions if an enactment prohibits the institution of that proceeding except by or with the Director's consent.
- (8) For the purpose of this section—
- (a) a direction is of a general nature if it relates to a class of prosecutions, and
  - (b) a direction is of a specific nature if it relates to the prosecution of a person for a specific offence.

## CHAPTER 2

### *Personnel and Organisation*

**9.—(1)** The appointment of a person to be the Commissioner of the Garda Síochána shall be made by the Government.

Appointment of  
Garda  
Commissioner.

(2) Subject to *section 11*, the person who, on the commencement of this section, holds the office of Garda Commissioner, continues in office in accordance with the terms and conditions of his or her appointment.

**10.—(1)** The Government may appoint, subject to and in accordance with the regulations, such numbers of persons as the Government see fit to the ranks of Deputy Garda Commissioner and Assistant Garda Commissioner in the Garda Síochána.

Appointment of  
Deputy and  
Assistant Garda  
Commissioners.

(2) Subject to *section 11*, a person who, on the commencement of this section, holds the office of Deputy Garda Commissioner, continues in office in accordance with the terms and conditions of his or her appointment.

(3) Subject to *section 11*, a person who, on the commencement of this section, holds the office of Assistant Garda Commissioner, continues in office in accordance with the terms and conditions of his or her appointment.

**11.—(1)** Subject to *section 12*, a person who holds the office of Garda Commissioner, Deputy Garda Commissioner or Assistant Garda Commissioner may be removed from office by the Government but only for stated reasons, including because—

Removal of Garda  
Commissioner,  
Deputy Garda  
Commissioner or  
Assistant Garda  
Commissioner from  
office.

- (a) the person has failed to perform the functions of the office with due diligence and effectiveness or, in the case of the Garda Commissioner, has failed to have regard to any of the matters specified in *section 26(2)*,
- (b) the person has engaged in conduct that brings discredit on the office or that may prejudice the proper performance of the functions of the office, or

- (c) the person's removal from office would, in the Government's opinion, be in the best interests of the Garda Síochána.

(2) On notifying under *section 12(1)* a person who holds the office of Garda Commissioner or Deputy Garda Commissioner that the Government intends to consider removing him or her from office, the Government may immediately suspend the person from duty.

(3) The suspension from duty continues until the Government makes a decision in relation to the matter under consideration, but only if there is no undue delay in taking steps under *section 12* or in making that decision.

Steps to be taken before removal of office holder.

**12.—(1)** Before considering a person's removal from office under *section 11*, the Government, shall—

- (a) notify the person that the Government intends to consider the matter and include in the notice a statement of their reasons for doing so, and
- (b) give the person an opportunity to make representations as to why he or she ought not to be removed from office.

(2) The Government may, if they consider it necessary or appropriate to do so, appoint a person to—

- (a) hold an inquiry into any matter giving rise to a notification under *subsection (1)*, and
- (b) report to the Government on the findings of the inquiry.

(3) A person appointed under this section to hold an inquiry may do one or more of the following:

- (a) direct a person, by notice delivered to him or her, to provide any information that is specified in the notice and is required for the purposes of the inquiry;
- (b) direct any person, by notice delivered to him or her, to produce at the time and place specified in the notice a document specified in the notice that is relevant to the inquiry and is in the person's power or control;
- (c) summon witnesses to attend the inquiry;
- (d) direct a witness to answer a question put to him or her at the inquiry;
- (e) give any other direction that appears to the person appointed under this section to be necessary, just and reasonable for the purposes of the inquiry;
- (f) administer oaths and affirmations to witnesses and examine witnesses attending the inquiry.

(4) If a person fails or refuses to comply with or disobeys a direction or summons under *subsection (3)*, the High Court may, on application by the person appointed under this section—

- (a) order the person in relation to whom the application was made to comply with the direction or, in the case of a summons, to attend the inquiry, and
  - (b) make such other (if any) order as it considers necessary and just to enable the direction to have full effect or, in the case of a summons, to ensure the attendance at the inquiry.
- (5) A person who—
- (a) is notified under *subsection (3)* and who, without lawful excuse, refuses or fails to comply with a direction under *subsection (3)(a)* or *(b)*,
  - (b) fails, without lawful excuse, to attend an inquiry in response to a summons under *subsection (3)(c)*,
  - (c) refuses to answer a question that the person conducting the inquiry may legally direct him or her to answer, or
  - (d) does or omits to do in relation to the inquiry any other thing the doing or omission of which would, if the inquiry had been a proceeding in the High Court, have been contempt of that Court,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 6 months or both.

- (6) If an inquiry is held, the Government shall—
- (a) consider the report on the findings of the inquiry,
  - (b) make a copy of the report available to the person whose removal from office is the subject of the report, and
  - (c) give that person an opportunity to make representations relating to the report.

(7) As soon as practicable after a person is removed from office under *section 11*, the Minister shall cause a statement of the reasons for the removal to be laid before each House of the Oireachtas.

**13.—(1)** The Government may appoint, subject to and in accordance with the regulations, such numbers of persons as the Government see fit to the ranks of superintendent and chief superintendent in the Garda Síochána.

Appointment of members to other ranks.

(2) *Sections 11* and *12* apply, with any necessary modifications, in relation to a person who holds an office referred to in *subsection (1)* of this section.

**14.—(1)** The Garda Commissioner may appoint, subject to and in accordance with the regulations, such numbers of persons as he or she sees fit to the ranks of garda, sergeant and inspector in the Garda Síochána.

Appointment of members to other ranks and summary dismissal of such members.

(2) Notwithstanding anything in this Act or the regulations, the Garda Commissioner may dismiss from the Garda Síochána a member not above the rank of inspector if—

- (a) the Commissioner is of the opinion that—
- (i) by reason of the member's conduct (which includes any act or omission), his or her continued membership would undermine public confidence in the Garda Síochána, and
  - (ii) the dismissal of the member is necessary to maintain that confidence,
- (b) the member has been informed of the basis for the Commissioner's opinion and has been given an opportunity to respond to the stated basis for that opinion and to advance reasons against the member's dismissal,
- (c) the Commissioner has considered any response by the member and any reasons advanced by the member, but the Commissioner remains of his or her opinion, and
- (d) the Government consents to the member's dismissal.

(3) *Subsection (2)* is not to be taken to limit the power to make or amend Disciplinary Regulations.

Reserve members.

**15.—**(1) The Garda Commissioner may, subject to *subsection (4)* and the regulations, appoint persons as reserve members of the Garda Síochána to assist it in performing its functions.

(2) A person is not eligible to be appointed as a reserve member unless he or she has completed the prescribed training.

(3) Subject to *subsection (5)*, a reserve member has, while on duty, the same powers, immunities, privileges and duties as a person appointed under *section 14* to the rank of garda.

(4) The power to appoint persons under *subsection (1)* may be exercised only if—

- (a) the Garda Commissioner has submitted proposals to the Minister for the training of persons to be so appointed, and
- (b) regulations have been made concerning their recruitment and training and prescribing the terms and conditions of their position.

(5) The Garda Commissioner may determine the range of powers to be exercised and duties to be carried out by reserve members.

Solemn declaration.

**16.—**(1) On being appointed, each member of the Garda Síochána shall make before a Peace Commissioner a declaration in the following form:

“I hereby solemnly and sincerely declare before God that—

- I will faithfully discharge the duties of a member of the Garda Síochána with fairness, integrity, regard for human rights, diligence and impartiality, upholding the Constitution and the laws and according equal respect to all people,



- while I continue to be a member, I will to the best of my skill and knowledge discharge all my duties according to law, and
- I do not belong to, and will not while I remain a member form, belong to or subscribe to, any political party or secret society whatsoever.”.

(2) The words “before God” may be omitted from the declaration at the request of the declarant.

**17.**—(1) The Minister shall, by regulation, establish a code of ethics that includes standards of conduct and practice for members of the Garda Síochána. Code of ethics.

(2) Before establishing or amending a code of ethics, the Minister shall consult with the Garda Commissioner and may request the Commissioner to prepare and submit to the Minister a draft code of ethics.

(3) If requested to prepare a draft code of ethics, the Garda Commissioner shall consult with the following about the content of the draft:

- (a) the representative associations established under *section 18* of this Act or section 13 of the Garda Síochána Act 1924;
- (b) the Minister for Finance;
- (c) the Equality Authority;
- (d) the Human Rights Commission;
- (e) the Standards in Public Office Commission;
- (f) the Ombudsman Commission;
- (g) any other person or body appearing to the Garda Commissioner to have an interest in the matter.

(4) In addition, in preparing a draft code of ethics, the Garda Commissioner shall have regard to—

- (a) the standards, practices and procedures applicable to the conduct of police officers in other member states of the European Union, and
- (b) any recommendations of the Council of Europe.

**18.**—(1) For the purpose of representing members of the Garda Síochána in all matters affecting their welfare and efficiency (including pay, pensions and conditions of service), there may be established, in accordance with the regulations, one or more than one association for all or any one or more of the ranks of the Garda Síochána below the rank of Assistant Garda Commissioner. Representative associations.

(2) An association established under *subsection (1)* must be independent of and not associated with any body or person outside the Garda Síochána, but it may employ persons who are not members of the Garda Síochána.

(3) A member of the Garda Síochána shall not be or become a member of any trade union or association (other than an association established under this section or section 13 of the Garda Síochána Act 1924) any object of which is to control or influence the pay, pensions or conditions of service of the Garda Síochána.

(4) If any question arises whether any body or association is a trade union or association referred to in *subsection (3)*, the question shall be determined by the Minister whose determination shall be final.

(5) The Minister—

(a) may, notwithstanding *subsection (2)*, authorise an association established under this section to be associated with a person or body outside the Garda Síochána in such cases and in such manner and subject to such conditions or restrictions as he or she may specify, and

(b) may vary or withdraw any such authorisation.

(6) An association established under this section for the purpose of representing members of the Garda Síochána holding the rank of Garda may include persons admitted, in accordance with the regulations, to training for membership in the Garda Síochána.

Civilian staff.

**19.—(1)** The Garda Commissioner may appoint such numbers of persons as civilian staff of the Garda Síochána as may be approved by the Minister with the consent of the Minister for Finance.

(2) The Garda Commissioner shall determine the grades of civilian staff and the numbers in each grade in the categories of professional, administrative and specialist staff, as may be approved by the Minister with the consent of the Minister for Finance.

(3) A member of civilian staff of the Garda Síochána is a civil servant of the Government.

(4) The Garda Commissioner is the appropriate authority (within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996) in relation to civilian staff of the Garda Síochána.

(5) Every member of the staff of the Department of Justice, Equality and Law Reform designated by order of the Minister for the purposes of this section shall, on being so designated, be transferred to and become a member of the civilian staff of the Garda Síochána.

(6) Before making an order for the purpose of *subsection (5)*, the Minister shall—

(a) notify in writing any recognised trade union or staff association concerned of the Minister's intention to do so, and

(b) consider, within such time as may be specified in the notification, any representations made by that trade union or staff association in relation to the matter.

(7) *Schedule 2* has effect in relation to staff transferred under this section.

## CHAPTER 3

*Roles of Minister and Garda Commissioner*

**20.—(1)** The Minister may—

Setting of priorities  
by Minister.

- (a) determine, and from time to time revise, priorities for the Garda Síochána in performing its functions under *section 7*, and
- (b) establish, and from time to time revise, levels of performance (“performance targets”) to be aimed at in seeking to achieve the objective of each priority.

(2) The Minister shall—

- (a) consult with the Garda Commissioner before determining or revising priorities or establishing or revising performance targets, and
- (b) supply the Garda Commissioner with a copy of the determined priorities, the established priorities and any revisions to those priorities or performance targets.

(3) As soon as practicable after determining or revising priorities and after establishing or revising performance targets, the Minister shall cause a copy of the priorities, revisions or performance targets, as the case may be, to be laid before each House of the Oireachtas.

(4) The Garda Commissioner shall—

- (a) inform the Minister of the measures taken to achieve the objectives of the priorities determined and performance targets established under this section and of the outcome of those measures, and
- (b) supply that information within the time specified by the Minister or, if no such time is specified, in the annual report.

**21.—(1)** Every 3 years or as directed under *subsection (6)*, the Garda Commissioner shall submit to the Minister for his or her approval a strategy statement for the Garda Síochána and for the policing of the State for the following 3 years.

Strategy statement.

(2) The strategy statement must be prepared in such form and manner as the Minister may direct and must include the following:

- (a) a mission statement;
- (b) medium term objectives, the strategies to achieve those objectives and the expected outputs and outcomes;
- (c) an identification of issues of concern to Departments of State and agencies in the State and a plan for managing those issues.

(3) In preparing the strategy statement, the Garda Commissioner shall have regard to the following matters:

- (a) relevant Government policy;

- (b) the priorities determined by the Minister under *section 20*;
- (c) the resources expected to be available to the Garda Síochána for the period to which the statement relates, and
- (d) the need to ensure the most beneficial, effective and efficient use of those resources.

(4) The Minister shall approve the strategy statement—

- (a) in the form of the draft submitted, or
- (b) with such amendments as the Minister, after consulting with the Garda Commissioner, may determine.

(5) As soon as practicable after approving the strategy statement, the Minister shall cause a copy of it to be laid before each House of the Oireachtas.

(6) The Minister may direct that the strategy statement be submitted at shorter intervals than every 3 years and cover a shorter period than 3 years.

Annual policing plan.

**22.—(1)** The Garda Commissioner shall each year prepare a policing plan setting out the proposed arrangements for the policing of the State for the following year, including any proposal to—

- (a) establish or dissolve a national unit of the Garda Síochána,
- (b) alter the boundaries of a regional geographical area under the control of an Assistant Garda Commissioner or of a divisional geographical area under the control of a chief superintendent,
- (c) establish or relocate a divisional headquarters under the control of a chief superintendent or of a district headquarters under the control of a superintendent, or
- (d) open a Garda Síochána station in a new location or cease stationing members in an existing station.

(2) In preparing a policing plan, the Garda Commissioner shall have regard to the following:

- (a) the priorities determined and performance targets established under *section 20*;
- (b) the strategy statement in operation under *section 21* during the year to which the plan relates;
- (c) relevant directives issued under *section 25*;
- (d) the resources expected to be available to the Garda Síochána for that year and the proposed allocation of those resources;
- (e) relevant Government policy.

(3) In preparing the policing plan, the Garda Commissioner may have regard to the most recent report of each joint policing committee.

(4) Before the month of November in each year, the Garda Commissioner shall submit to the Minister for approval a draft of the policing plan for the following year.

(5) The Minister shall approve the policing plan—

- (a) in the form of the draft submitted, or
- (b) with such amendments as the Minister, after consulting with the Garda Commissioner, may determine.

(6) As soon as practicable after approving the policing plan, the Minister shall cause a copy of it to be laid before each House of the Oireachtas.

**23.—**(1) At the end of each 3 year period, the Garda Commissioner shall submit to the Minister a report, prepared by the Commissioner, containing a review of the efficiency and effectiveness of the management and deployment of resources available to the Garda Síochána during that 3 year period.

Three year review report.

(2) The first 3 year period begins on the day this section comes into operation and each subsequent 3 year period begins on the day after the end of the period for which the previous report was submitted.

(3) The report may contain recommendations that the Garda Commissioner considers necessary for improving the management and deployment of resources.

(4) As soon as practicable after receiving the report, the Minister shall, subject to *subsection (5)*, cause a copy of it to be laid before each House of the Oireachtas.

(5) The Minister may exclude from the copies of reports that are to be laid before the Houses of the Oireachtas any matter that, in his or her opinion—

- (a) would be prejudicial to the interests of national security, or
- (b) might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person.

**24.—**(1) As soon as practicable after the commencement of this section, the Garda Commissioner shall establish a Professional Standards Unit, to be headed by an officer not below the rank of chief superintendent, to—

Professional Standards Unit.

- (a) examine and review, as directed by the Commissioner, the operational, administrative and management performance of the Garda Síochána at all levels,
- (b) propose measures to the Commissioner to improve that performance, and
- (c) promote the highest standards of practice, as measured by reference to the best standards of comparable police services, in operational, administrative and management matters relating to the Garda Síochána.

(2) Not later than 31 March in each year, the Garda Commissioner shall submit a report to the Minister on the activities of the Professional Standards Unit in the preceding year.

Directives.

**25.—**(1) Following the approval of the Government, the Minister may issue to the Garda Commissioner written directives concerning any matter relating to the Garda Síochána.

(2) The Garda Commissioner shall, in performing the functions of that office, comply with any directive issued under this section.

(3) As soon as practicable after issuing a directive under this section, the Minister shall cause a copy of the directive to be laid before each House of the Oireachtas, but if compliance with this requirement might prejudice the security of the State or might impede the prevention, investigation or prosecution of an offence, it is sufficient if a written statement indicating that a directive has been issued is laid before each House.

(4) The Minister's power under *subsection (1)* may not be exercised to limit the independence of a member of the Garda Síochána in performing functions relating to the investigation of a specific offence or the prosecution of an offence as authorised by *section 8*.

(5) The Garda Commissioner shall inform the Minister of the measures taken by the Commissioner to comply with a directive issued under this section and supply the information within the time specified by the Minister.

Functions of Garda Commissioner.

**26.—**(1) Subject to this Act and the regulations, the Garda Commissioner has the following functions:

- (a) to direct and control the Garda Síochána;
- (b) to carry on and manage and control generally the administration and business of the Garda Síochána, including by arranging for the recruitment, training and appointment of its members and civilian staff;
- (c) to advise the Minister on policing and security matters;
- (d) to perform any other functions that are assigned to him or her by this Act or that may, by regulation, be assigned to him or her.

(2) In performing his or her functions, the Garda Commissioner shall have regard to the following matters:

- (a) the objective of promoting effectiveness, efficiency and economy in the Garda Síochána;
- (b) the priorities and performance targets in operation under *section 20* at the relevant time;
- (c) any relevant policies of the Minister or the Government;
- (d) the strategy statement in operation under *section 21* at that time;
- (e) the annual policing plan prepared under *section 22*;

(f) any directive issued under *section 25*.

(3) The Garda Commissioner is accountable to the Minister for the performance of the Commissioner's functions and those of the Garda Síochána.

**27.—**(1) The Garda Commissioner shall make arrangements for obtaining the views of the public about matters concerning policing and the state of crime. Arrangements for obtaining views of public.

(2) Before making any arrangements under this section, the Garda Commissioner shall consult with the Minister about the proposed arrangements and the Minister may approve the arrangements—

(a) as proposed, or

(b) with such revisions as the Minister, after consulting with the Commissioner, may determine.

**28.—**(1) With the prior consent of the Government, the Garda Commissioner may, on behalf of the Garda Síochána, enter into an agreement with a police service or other law enforcement agency outside the State. Power to enter into agreements with other law enforcement agencies.

(2) The agreement may provide for the co-operation of the parties or the exchange of information or such other matters as the Garda Commissioner thinks fit.

**29.—**(1) Subject to this Act and the regulations, the Garda Commissioner may, for the purposes of performing his or her functions under this Act in relation to the administration and business of the Garda Síochána— Powers relating to contracts, bank accounts, etc.

(a) enter on behalf of the Garda Síochána into a contract with any person or body concerning any matter arising in relation to those functions,

(b) with the prior consent of the Minister and the Minister for Finance, operate in the State or elsewhere bank accounts of any description, and

(c) do any other thing necessary for enabling the Commissioner to perform those functions.

(2) Subject to the consent of the Minister and the Minister for Finance, the power conferred by *subsection (1)(a)* includes the power to engage consultants or advisers to assist the Garda Commissioner in performing functions under this Act.

(3) The power conferred by *subsection (1)(a)* does not include the power to enter into a contract relating to land or an interest in land.

(4) The Garda Commissioner may sue and be sued in the name of his or her office.

(5) A contract entered into under this section by a person holding the office of Garda Commissioner is binding on and enforceable by that person and his or her successors in office, but neither that person nor any successor in office is personally liable on the contract.

(6) *Subsection (5)* applies whether or not the contract was entered into pursuant to a power delegated under *section 31*.

(7) Notwithstanding *subsection (1)(b)*, the Garda Commissioner does not have power to borrow money by means of a bank overdraft or otherwise.

Provision of police services for certain events, etc.

**30.**—(1) At the request of a person, the Garda Commissioner may provide and charge for police services for events on private property or in areas open to the public or, subject to the regulations, for police services of a kind described in *subsection (3)*, if—

- (a) it is in the public interest and consistent with the functions of the Garda Síochána to provide the services, and
- (b) the Commissioner is satisfied that the person has paid or will pay to the Commissioner the charges for the services.

(2) The following are examples of the types of events for which police services may be provided under this section:

- (a) sports fixtures;
- (b) concerts;
- (c) festivals and exhibitions;
- (d) meetings and conferences;
- (e) the making of films, videos, television programmes and advertisements;
- (f) appearances by individuals or groups of individuals likely to attract large numbers of people.

(3) Police services relating to the protection, whether by means of police escorts or otherwise, of persons or property at risk of harm while in transit within the State may be provided under this section, but only in the circumstances and to the extent authorised by regulation under *section 122(1)(o)*.

(4) Subject to any regulation under *section 122(1)(p)*, the Garda Commissioner may set charges for police services provided under this section that are sufficient to cover the costs of providing those services.

(5) The Public Offices Fees Act 1879 does not apply to any charges payable under this section.

(6) The Garda Commissioner may recover as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable, any amount due under this section.

Delegation of Garda Commissioner's functions.

**31.**—(1) Subject to the regulations, the Garda Commissioner may, in writing, delegate any of his or her functions under this Act to—

- (a) members of the Garda Síochána specified by rank or name, or
- (b) members of the Garda Síochána's civilian staff specified by grade, position, name or otherwise.



(2) A delegation under this section may—

- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
- (b) be made subject to conditions or restrictions, and
- (c) be revoked or varied by the Garda Commissioner at any time.

(3) The delegation of a function does not preclude the Garda Commissioner from performing the function.

(4) Where the Garda Commissioner's functions under a provision of this Act are delegated to a person, any references in that provision to the Commissioner are to be read as references to that person.

(5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Garda Commissioner.

**32.—**(1) The Minister may authorise a Deputy Garda Commissioner to perform the functions of the Garda Commissioner—

Exercise of functions in Garda Commissioner's absence.

- (a) during any absence, incapacity or suspension from duty of the Garda Commissioner, or
- (b) during any vacancy in the office of Garda Commissioner.

(2) In the absence of a Deputy Garda Commissioner, the Minister may authorise an Assistant Garda Commissioner to perform the functions of the Garda Commissioner during any absence or other circumstance described in *paragraph (a) or (b) of subsection (1)*.

**33.—**(1) Subject to *section 22*, the Garda Commissioner shall determine the manner in which the Garda Síochána are to be distributed and stationed throughout the State.

Distribution of Garda Síochána.

(2) The Garda Commissioner shall, to the extent practicable, ensure that members of the Garda Síochána stationed in a district that includes a Gaeltacht area are sufficiently competent in the Irish language to enable them to use it with facility in carrying out their duties.

(3) In this section “Gaeltacht area” means an area for the time being determined to be a Gaeltacht area by order made under section 2 of the Ministers and Secretaries (Amendment) Act 1956.

#### CHAPTER 4

##### *Co-operation with Local Authorities and Security in Public Places*

**34.—**In this Chapter, unless the context otherwise requires, “administrative area”, “local authority” and “public authority” have the meanings given by section 2 of the Local Government Act 2001.

Definitions (Chapter 4).

Guidelines concerning joint policing committees.

**35.—**(1) As soon as practicable after the passing of this Act and after consulting with the Minister for the Environment, Heritage and Local Government and the Minister for Community, Rural and Gaeltacht Affairs, the Minister shall issue to local authorities and the Garda Commissioner guidelines concerning the establishment and maintenance of joint policing committees by local authorities and the Garda Commissioner.

(2) Guidelines issued under this section concerning a joint policing committee may include provision for—

- (a) the establishment of the committee,
- (b) the membership of the committee, including the appointment to it of—
  - (i) members of the local authority concerned nominated by it for such appointment,
  - (ii) members of the Garda Síochána nominated by the Garda Commissioner in accordance with *subsection (3)*,
  - (iii) members of the Oireachtas,
  - (iv) persons nominated by other public authorities, and
  - (v) such other persons (including persons representing local community interests) as may be provided for in the guidelines,
- (c) the appointment as chairperson of the committee of a member of the local authority concerned who has been nominated in accordance with *paragraph (b)(i)*,
- (d) the term of office of the chairperson and other members of the committee,
- (e) matters arising in connection with the attendance at committee meetings of members who are also members of the Oireachtas,
- (f) the circumstances in which committee meetings may be held otherwise than in public,
- (g) the establishment, membership, terms of reference and procedures of subcommittees,
- (h) the preparation of reports by the committee, their ratification by the local authority concerned and their distribution,
- (i) the co-operation of the committee with other joint policing committees,
- (j) the joint action of the committee and other joint policing committees,
- (k) the funding of the committee and any subcommittees, and
- (l) such other matters as the Minister considers appropriate, including consultation with such other public authorities, bodies or persons as may be required.

(3) In nominating members of the Garda Síochána for appointment to a joint policing committee, the Garda Commissioner shall have regard to the need to ensure that such members are of appropriate rank and seniority.

(4) The Minister may, after consulting with the Minister for the Environment, Heritage and Local Government and the Minister for Community, Rural and Gaeltacht Affairs—

- (a) revise any guidelines issued under this section, or
- (b) withdraw those guidelines and issue new guidelines.

(5) The Minister shall cause a copy of guidelines issued under this section and of any revisions to them to be laid before each House of the Oireachtas as soon as practicable after the guidelines are issued or revised.

**36.—**(1) A local authority and the Garda Commissioner shall arrange for the establishment of a joint policing committee in accordance with guidelines issued under *section 35*.

Establishment and functions of joint policing committees.

(2) The joint policing committee's function is to serve as a forum for consultations, discussions and recommendations on matters affecting the policing of the local authority's administrative area, and in particular to—

- (a) keep under review—
  - (i) the levels and patterns of crime, disorder and anti-social behaviour in that area (including the patterns and levels of misuse of alcohol and drugs), and
  - (ii) the factors underlying and contributing to the levels of crime, disorder and anti-social behaviour in the area,
- (b) advise the local authority concerned and the Garda Síochána on how they might best perform their functions having regard to the need to do everything feasible to improve the safety and quality of life and to prevent crime, disorder and anti-social behaviour within the area,
- (c) arrange and host public meetings concerning matters affecting the policing of the local authority's administrative area,
- (d) establish, in consultation with the local Garda superintendent, as the committee considers necessary within specific neighbourhoods of the area, local policing fora to discuss and make recommendations to the committee concerning matters that it is to keep under review under *paragraph (a)* or on which it is to advise under *paragraph (b)*, in so far as those matters affect their neighbourhoods, and
- (e) co-ordinate the activities of local policing fora established under *paragraph (d)* or otherwise.

(3) If any dispute arises over the establishment of a local policing forum, the joint policing committee shall submit the dispute to the Minister whose decision, made after consulting with the Minister for

the Environment, Heritage and Local Government and the Minister for Community, Rural and Gaeltacht Affairs, shall be final.

(4) Neither the joint policing committee nor any of its subcommittees may consider matters relating to a specific criminal investigation or prosecution or matters relating to the security of the State.

(5) Not later than 3 months after the end of each year, the joint policing committee shall—

(a) submit to the local authority a report on the performance of its functions during the preceding year, and

(b) supply a copy of the report to the Minister, the Garda Commissioner and such other persons as may be specified in the guidelines issued under *section 35*.

(6) A statement that, in the course of a discussion at a meeting of a joint policing committee or of any of its subcommittees, is made in any form and without malice by a member of the committee or subcommittee or by a person attending the meeting at the request of the committee or subcommittee is privileged for purposes of the law of defamation and so is any subsequent publication of the statement made without malice.

Duty of local authorities.

**37.—**(1) A local authority shall, in performing its functions, have regard to the importance of taking steps to prevent crime, disorder and anti-social behaviour within its area of responsibility.

(2) *Subsection (1)* is not to be taken to confer on any person a right in law that the person would not otherwise have to require a local authority to take any steps referred to in that subsection or to seek damages for a local authority's failure to take such steps.

Security in public places.

**38.—**(1) The Garda Commissioner may authorise the installation and operation of CCTV for the sole or primary purpose of securing public order and safety in public places by facilitating the deterrence, prevention, detection and prosecution of offences.

(2) The Garda Commissioner shall specify the areas within which, based on the information available to him or her, the installation and operation of CCTV is warranted for the purpose specified in *subsection (1)*.

(3) Authorisation may be given to any or all of the following:

(a) members of the Garda Síochána;

(b) persons who meet the established criteria and who are retained under a contract with the Garda Commissioner;

(c) persons who meet the established criteria and whose application for authorisation in respect of a specified area within the administrative area of a local authority has been approved by the local authority after consulting with the joint policing committee for that administrative area.

(4) The Garda Commissioner shall establish criteria for the purposes of *subsection (3)(b)*.

(5) The Government shall, by order, establish criteria for the purposes of *subsection (3)(c)* and may establish different criteria for different classes of applicants for authorisation.

(6) An authorisation may contain such terms and conditions as the Garda Commissioner considers necessary—

- (a) generally for the purpose of this section, and
- (b) in relation only to an authorisation given under *subsection (3)(c)*, for the purposes of controlling and supervising the operation of the CCTV to which the authorisation relates.

(7) A person given an authorisation under *subsection (3)(c)* shall ensure that members of the Garda Síochána have access at all times to the CCTV to which that authorisation relates for the purpose of—

- (a) supervising and controlling the operation of the CCTV on behalf of the Garda Commissioner, or
- (b) retrieving information or data recorded by the CCTV.

(8) The Garda Commissioner may—

- (a) issue directions to authorised persons in relation to the installation and operation of CCTV, and
- (b) with the Minister's consent, revoke, for failure to comply with the terms and conditions of the authorisation or with a direction issued by the Commissioner, an authorisation given under *subsection (3)(c)*.

(9) On being notified by the Garda Commissioner of the revocation of an authorisation under *subsection (8)*, the person to whom the authorisation was given shall terminate the operation of the CCTV to which the revoked authorisation relates.

(10) A person who contravenes *subsection (9)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(11) The Minister—

- (a) shall issue guidelines to the Garda Commissioner concerning the supervision and control by the Commissioner of the monitoring of CCTV by authorised persons, and
- (b) may revise those guidelines or may withdraw them and issue new guidelines.

(12) The Minister shall cause a copy of any guidelines issued under this section, and of any revisions to them, to be laid before each House of the Oireachtas as soon as practicable after the guidelines are issued or revised.

(13) This section does not apply to the installation or operation of CCTV on any premises by the owner or occupier of the premises for the purpose of safeguarding persons or property on the premises or in its environs.

(14) In this section—

“authorisation” means an authorisation given by the Garda Commissioner under this section;

“authorised person” means a person referred to in *subsection (3)(b)* or *(c)* who holds an authorisation;

“CCTV” means any fixed and permanent system employing optical devices for recording visual images of events occurring in public places;

“operation”, in relation to CCTV, includes the maintenance and monitoring of CCTV;

“public place” means a place to which the public have or are permitted access, whether as of right or by express or implied permission;

“specified area” means an area specified under *subsection (2)*.

#### CHAPTER 5

##### *Accountability of Members for discharge of official duties and duty of Garda Commissioner to account to the Government, etc.*

Duty of members of Garda Síochána to account.

**39.—(1)** A member of the Garda Síochána shall, when directed to do so by a member of a higher rank, account for any act done or omission made by the member while on duty.

(2) A failure to comply with a direction under *subsection (1)* shall be the subject of disciplinary action in accordance with the Disciplinary Regulations.

(3) The member concerned shall be informed by the member of higher rank that such failure may lead to dismissal from the Garda Síochána.

(4) Any information provided by a member of the Garda Síochána in accordance with a direction under *subsection (1)* is not admissible in any criminal proceedings against the member and this shall be explained to the member in ordinary language by the member of higher rank.

(5) For the purpose of *subsection (4)* “criminal proceedings” does not include disciplinary proceedings.

Duty of Garda Commissioner to account to Government and provide material to Attorney General.

**40.—(1)** The Garda Commissioner shall account fully to the Government and the Minister through the Secretary General of the Department of Justice, Equality and Law Reform for any aspect of his or her functions.

(2) The Garda Commissioner’s duty under *subsection (1)* includes the duty to provide, on request by the Secretary General, any document in the power or control of the Garda Síochána, including material in the form of Garda records, statements made by members of the Garda Síochána and by other persons and reports.

(3) The Garda Commissioner shall provide the Attorney General with all of the material specified in *subsection (2)* that is required by the Attorney General in connection with the conduct of legal proceedings on behalf of the State.

**41.**—(1) The Garda Commissioner shall keep the Minister and the Secretary General of the Department of Justice, Equality and Law Reform fully informed of the following:

Duty of Garda Commissioner to provide information to Minister.

- (a) matters relating to significant developments concerning—
  - (i) the preservation of peace and public order in the State,
  - (ii) the protection of life and property in the State, and
  - (iii) the protection of the security of the State;
- (b) significant developments that might reasonably be expected to affect adversely public confidence in the Garda Síochána;
- (c) matters relevant to the accountability of the Government to the Houses of the Oireachtas;
- (d) any other matters that, in the Commissioner’s opinion, should be brought to the Minister’s attention.

(2) Whenever required by the Minister, the Garda Commissioner shall submit to the Minister a report on any matters connected with the policing or security of the State or the performance of the Commissioner’s other functions that may be specified in the requirement.

(3) A report under *subsection (2)* must—

- (a) address matters of general or specific concern that are specified in the Minister’s requirement, and
- (b) be made in the form and within the period specified in the requirement.

(4) The Minister may publish all or part of a report submitted under this section.

**42.**—(1) The Minister, with respect to any matter considered by him or her to be of public concern, may by order appoint a person to—

Special inquiries relating to administration, practice or procedure of Garda Síochána.

- (a) inquire into any aspect of the administration, practice or procedure of the Garda Síochána, and
- (b) make a report to the Minister on the conclusion of the inquiry.

(2) A person who, in the Minister’s opinion, has the experience, qualifications, training or expertise appropriate for the inquiry may be appointed to conduct the inquiry.

(3) The Minister shall specify the terms of reference of the inquiry in the order under *subsection (1)* and may, by order made at any time before the submission of the final report, amend those terms for the purpose of clarifying, limiting or extending the scope of the inquiry.

(4) For the purpose of the inquiry, the appointed person—

(a) may require a member of the Garda Síochána who possesses information or has a document or thing in the member's power or control that is relevant to the inquiry, to provide that information, document or thing to that person, and

(b) where appropriate, may require such member to attend before the appointed person for that purpose.

(5) A member of the Garda Síochána required under *subsection (4)(b)* to attend before the appointed person shall co-operate with the inquiry and shall answer fully and truthfully any question put to the member by that person.

(6) A failure to comply with a requirement under *subsection (4)* shall be the subject of disciplinary action in accordance with the Disciplinary Regulations.

(7) Any information, document or thing provided by a member of the Garda Síochána in accordance with a requirement under *subsection (4)* is not admissible in any criminal proceedings against the member and this shall be explained to the member in ordinary language by the appointed person.

(8) The Minister may publish all or part of any report received under this section.

(9) This section applies even if the matter considered by the Minister to be of public concern arose before the passing of this Act.

(10) The power to order an inquiry under this Act is additional to any power conferred by this or another Act relating to inquiries or investigations.

(11) In this section—

“appointed person” means a person appointed under this section to conduct an inquiry;

“criminal proceedings” does not include disciplinary proceedings.

## CHAPTER 6

### *Accountability*

Accountability for accounts of Garda Síochána.

**43.—(1)** The Garda Commissioner is the accounting officer in relation to the appropriation accounts of the Garda Síochána for the purposes of the Comptroller and Auditor General Acts 1866 to 1998.

(2) Whenever required to do so by the Committee of Public Accounts, the Garda Commissioner shall give evidence to it on the following matters:

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or record of account subject to audit by the Comptroller and Auditor General;

(b) the economy and the efficiency of the Garda Síochána in using its resources;



- (c) the systems, procedures and practices employed by the Garda Síochána for evaluating the effectiveness of its operations;
- (d) any matter affecting the Garda Síochána that is referred to in—
  - (i) a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or
  - (ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann in so far as the report relates to a matter specified in any of *paragraphs (a) to (c)*.

(3) In carrying out duties under *subsection (2)*, the Garda Commissioner shall not—

- (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy,
- (b) discuss matters relating to the security of the State,
- (c) provide information, other than financial information, relating to specific criminal investigations or prosecutions except an investigation or prosecution relating to money or assets for which he or she is the accounting officer, or
- (d) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

**44.—(1)** As soon as practicable after the commencement of this section, the Garda Commissioner shall establish an audit committee to perform the functions specified in *section 45*.

Audit committee:  
appointment of  
members, etc.

(2) The audit committee is to consist of the following persons, all of whom are to be appointed by the Minister:

- (a) a Deputy Garda Commissioner;
- (b) not fewer than 4 other persons who have relevant skills and experience and none of whom is, or has ever been, a member of the Garda Síochána.

(3) The Minister shall designate as the chairperson of the audit committee one of the persons appointed under *subsection (2)(b)*.

(4) The members of the audit committee hold office for the period that may be determined by the Minister, but a member—

- (a) may resign from the committee by letter addressed to the Minister, or
- (b) may at any time be removed from office by the Minister for stated reasons.

(5) The members appointed under *subsection (2)(b)* hold office on such terms and conditions as may be determined by the Minister and the Minister for Finance.

(6) The Garda Commissioner shall ensure that the audit committee is provided with the necessary secretarial and other resources to enable it to perform its functions.

Functions of audit committee.

**45.—**(1) The audit committee shall—

- (a) advise the Garda Commissioner on financial matters relating to his or her functions,
- (b) report in writing at least once a year to the Commissioner on those matters and on its activities in the previous year, and
- (c) provide the Minister with a copy of each report.

(2) The audit committee's duties under *subsection (1)(a)* include advising on the following matters:

- (a) the proper implementation of Government guidelines on financial issues;
- (b) compliance with section 22 of the Exchequer and Audit Departments Act 1866, section 19 of the Comptroller and Auditor General (Amendment) Act 1993 and any other obligations imposed by law relating to financial matters;
- (c) the appropriateness, efficiency and effectiveness of the Garda Síochána's procedures relating to—
  - (i) public procurement,
  - (ii) seeking sanction for expenditure and complying with that sanction,
  - (iii) acquiring, keeping custody of and disposing of assets,
  - (iv) risk management,
  - (v) financial reporting, and
  - (vi) internal audits.

(3) The audit committee shall meet at least 4 times in each year and may invite a person who has responsibility within the Garda Síochána for internal audits or for any financial matters or any other person it considers appropriate to attend specific meetings.

(4) The Garda Commissioner shall—

- (a) ensure that the audit committee is provided with all of the Garda Síochána's audit reports, audit plans and monthly reports on expenditures, and
- (b) if he or she has reason to suspect that any material misappropriation of the money for which he or she is the accounting officer, or any fraudulent conversion or misapplication of the Garda Síochána's property, may have taken place, report the matter to the committee as soon as practicable.

(5) In addition, the Garda Commissioner shall, subject to *subsection (6)*, ensure that the audit committee is provided at its request

with details of any financial matter or procedure necessary for performing its functions, including details relating to—

- (a) any contract that the Commissioner proposes to enter into and that involves the expenditure of more than an amount specified by the committee, and
- (b) any legal action against the Commissioner that gives rise to a potential financial liability.

(6) Details shall not be provided under *subsection (5)* in response to a request if the Garda Commissioner—

- (a) considers that the provision of the details requested could prejudice the security of the State or endanger life, and
- (b) so certifies in a statement to the audit committee.

**46.**—(1) Not later than 4 months after the end of each year, the Garda Commissioner shall submit to the Minister a report, in such form as the Minister may direct, on the policing of the State during that year. Annual report.

(2) The report must include an account of the following:

- (a) the implementation of the policing plan for the year to which the report relates;
- (b) the performance of the Garda Síochána's functions during that year;
- (c) the achievement of the performance targets established under *section 20* for the year;
- (d) the implementation of any directives under *section 25* laid before the Houses of the Oireachtas during the year;
- (e) any other matter that the Garda Commissioner thinks fit.

(3) As soon as practicable and not later than 30 days after receiving the report, the Minister shall cause a copy of it to be laid before each House of the Oireachtas.

**47.**—(1) The Garda Commissioner shall ensure that, in respect of each specified period, statistical information concerning offences, criminal proceedings and the state of crime in the State is compiled and stored. Statistical information.

(2) The Garda Commissioner shall make information compiled in accordance with *subsection (1)* available to the Minister and the Central Statistics Office at the times and in the manner that the Minister may require.

(3) In this section “specified period” means—

- (a) the period beginning on the day this section comes into operation and ending 3 months after that day, and
- (b) each subsequent period of 3 months beginning on the day after the end of the previous period.

## CHAPTER 7

*Liability*

Liability for certain acts of members of Garda Síochána.

**48.—**(1) Where a member of the Garda Síochána commits an actionable wrong in the course of performing the member’s functions under this Act—

- (a) the State is liable to an action for damages in respect of damage resulting from the wrong as if the State were the employer of the member, and
- (b) the member is, for the purposes of such liability, deemed to be the servant of the State in so far as the member was acting in the course of performing his or her functions under this Act.

(2) In proceedings brought against the State by virtue of this section, the plaintiff need not name as a defendant the member or members of the Garda Síochána alleged to have committed the actionable wrong.

(3) Nothing in this section affects any right of the State to—

- (a) join an individual member of the Garda Síochána as a defendant to proceedings in respect of an actionable wrong to which this section applies, or
- (b) recover contribution or seek indemnity from an individual member of the Garda Síochána who is, or who, if sued at the time of the commission of that wrong, would have been, liable in respect of the same damage.

(4) This section applies to proceedings initiated after the commencement of this section.

(5) This section does not apply to a wrong committed by the use of a mechanically propelled vehicle belonging to the State.

(6) In this section—

“actionable wrong” means a tort or breach of a constitutional right, whether or not the wrong is also a crime and whether or not the wrong is intentional;

“damage” includes loss of property, loss of life and personal injury;

“damages” includes exemplary damages and aggravated damages;

“personal injury” includes any disease and any impairment of a person’s physical or mental condition.

Legal aid for members charged with certain offences.

**49.—**(1) The Minister may contribute to the legal costs of a member of the Garda Síochána who is charged with a criminal offence if—

- (a) any of the acts that are alleged to constitute the offence was directly related to the performance of the member’s functions,

- (b) the Minister is of the opinion that the member's financial circumstances are such that those costs would result in undue hardship, and
- (c) the contribution does not exceed the sum that would be payable if a legal aid certificate were granted in respect of the applicable court proceedings.

(2) In this section—

“legal aid certificate” has the meaning given by section 9(2) of the Criminal Justice (Legal Aid) Act 1962;

“legal costs” means any fees, costs or other expenses properly incurred by a member referred to in *subsection (1)* in preparing and conducting—

- (a) the member's defence to the offence charged, and
- (b) if applicable, the member's appeal or stated case in relation to that offence.

#### CHAPTER 8

##### *International Service and Co-operation with other Police Services*

**50.**—(1) In this Chapter, unless the context otherwise requires— Interpretation  
(Chapter 8).

“An tArd-Chláraitheoir” has the meaning given by section 1(1) of the Civil Registration Act 2004;

“Chief Constable” means the Chief Constable of the Police Service of Northern Ireland;

“disciplinary action” means—

- (a) dismissal,
- (b) requirement to retire or resign as an alternative to dismissal,
- (c) reduction in rank,
- (d) reduction in pay not exceeding 4 weeks' pay,
- (e) reprimand,
- (f) warning,
- (g) caution, or
- (h) advice;

“eligible member” means a member who has offered in writing to be available during a specified period for international service and whose offer has been accepted by the Garda Commissioner;

“international organisation” includes—

- (a) the United Nations,
- (b) the Organisation for Security and Co-operation in Europe,

- (c) the European Union or any institution or body of the European Union, and
- (d) any force or mission organised by, or operating with the mandate of, an international organisation as defined in any of *paragraphs (a) to (c)*;

“international service” means service outside the State under *section 51(1) or (2)*.

(2) The text of the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland on Police Co-operation, done at Belfast on 29 April 2002 is set out in *Schedule 3* for convenience of reference.

International  
service.

**51.—(1)** Subject to *subsection (3)*, the Garda Commissioner shall assign eligible members of the Garda Síochána in such numbers and of such rank as the Government may determine for service outside the State—

- (a) to carry out duties of a police character with an international organisation, or
- (b) to advise others on, or to monitor their performance of, such duties.

(2) Subject to *subsection (3)*, the Garda Commissioner may assign eligible members of the Garda Síochána for service outside the State—

- (a) to carry out liaison duties with Europol or, subject to the agreement of the Government, with a law enforcement agency of a state other than the State, or
- (b) on secondment to an international organisation with the consent of the Minister.

(3) An eligible member may be assigned under this section only for the period specified by the member in his or her offer to be available for international service.

(4) This Act, the regulations, and the Garda Síochána Compensation Acts 1941 and 1945 continue to apply to members while on international service.

(5) Nothing in this section prevents members of the Garda Síochána stationed in the State from travelling outside the State in the course of carrying out their duties.

Appointment of  
members of Police  
Service of Northern  
Ireland to certain  
ranks in Garda  
Síochána.

**52.—(1)** The Government may appoint members of the Police Service of Northern Ireland to such ranks in the Garda Síochána not below superintendent as may be prescribed.

(2) The number or proportion of vacancies in each rank to which such members may be appointed may also be prescribed.

(3) In determining the eligibility of a member of the Police Service of Northern Ireland to apply for appointment to a rank of the Garda Síochána under this section, appropriate recognition shall be given to the rank, experience and qualifications that would be

required for appointment to an equivalent rank in the Police Service of Northern Ireland.

(4) Such a member shall compete in a merit-based selection procedure with other applicants for appointment to the rank in the Garda Síochána concerned.

**53.**—(1) Subject to *subsection (3)*, the Garda Commissioner may, at the request of the Chief Constable—

Secondment from Police Service of Northern Ireland to certain ranks in Garda Síochána.

- (a) appoint a member of the Police Service of Northern Ireland to a rank in the Garda Síochána not above that of inspector for a period not exceeding 3 years, or
- (b) request the Government to appoint such a member to a rank in the Garda Síochána not below that of superintendent for such period.

(2) Subject to *subsection (3)*, the Government may comply with a request under *subsection (1)(b)*.

(3) The ranks in the Garda Síochána to which such members may be appointed under this section and the number of such members to be so appointed may be prescribed.

(4) A person appointed under this section shall, during the appointment—

- (a) be under the direction and control of the Garda Commissioner, and
- (b) subject to *subsection (5)*, have the powers, immunities, privileges and duties of a member of the Garda Síochána of the rank to which he or she was appointed.

(5) The Garda Síochána Compensation Acts 1941 and 1945 do not apply in relation to a person appointed under this section.

(6) The Garda Commissioner or the Government, as the case may be, may terminate an appointment under this section.

**54.**—(1) The Garda Commissioner may, on application by a member of the Garda Síochána, arrange with the Chief Constable, for the member's secondment to the Police Service of Northern Ireland for a period not exceeding 3 years.

Secondment from Garda Síochána to Police Service of Northern Ireland.

(2) The Garda Commissioner may terminate a secondment to the Police Service of Northern Ireland.

(3) During the period of secondment—

- (a) the member shall continue to be paid as a member of the Garda Síochána, but shall not be subject to the direction or control of the Garda Commissioner or be entitled to exercise in the State any of such a member's powers,
- (b) the member's service shall be regarded as service with the Garda Síochána for pension, promotion and seniority purposes, and

- (c) the member is entitled to claim compensation under the Garda Síochána Compensation Acts 1941 and 1945 for malicious injuries received in the course of or in relation to the carrying out of his or her duties with the Police Service of Northern Ireland as if he or she had not been seconded and the injuries had been received in the course of or in relation to the carrying out of his or her duties as a member of the Garda Síochána.

(4) The number and rank of members of the Garda Síochána who may be seconded under this section may be prescribed.

Breach of discipline by seconded member of Garda Síochána.

**55.**—(1) A member of the Garda Síochána who, while on secondment to the Police Service of Northern Ireland, does or omits to do any act the doing or omission of which by a member of that service would constitute a breach of discipline is liable on the expiry or termination of the period of secondment to disciplinary action by the Garda Commissioner or the Government, as appropriate, in respect of the breach.

(2) Disciplinary action under *subsection (1)* may be based on—

- (a) a finding, under the law and procedure for the time being applicable in relation to the investigation of breaches of discipline by members of the Police Service of Northern Ireland, that the member of the Garda Síochána concerned is in breach of discipline,
- (b) a decision on any appeal against or review of the finding,
- (c) any relevant court proceedings, and
- (d) any related documents.

(3) Before taking any disciplinary action under *subsection (1)*, the Garda Commissioner or the Government, as the case may be, shall—

- (a) send a copy of the findings to the member of the Garda Síochána concerned, and
- (b) give that member an opportunity, within a specified period, to show cause why the action should not be taken against him or her.

(4) The Disciplinary Regulations may make provision for the procedures to be followed after the receipt by the member concerned of the copy of the findings referred to in *subsection (3)*.

(5) In any proceedings—

- (a) a document purporting to be a finding or decision mentioned in *subsection (2)* is evidence, unless the contrary is proved, of the finding or decision, and
- (b) a document purporting to be a report of court proceedings or a related document mentioned in that subsection is evidence, unless the contrary is proved, of the matters referred to in the report or related document.

(6) In this section “breach of discipline” means an act or omission that if done or made by a member of the Police Service of Northern



Ireland could be the subject of disciplinary action by the authorities in Northern Ireland.

**56.**—(1) Subject to *subsections (2) to (4), Part 4* and the Disciplinary Regulations apply to a person appointed to a rank in the Garda Síochána under *section 53* who does or omits to do any act the doing or omission of which would, if he or she were appointed otherwise than under that section, give rise to the taking of disciplinary action.

Breach of discipline by seconded member of Police Service of Northern Ireland.

(2) For as long as a person referred to in *subsection (1)* is a member of the Police Service of Northern Ireland, an investigation under *Part 4* and any investigation or proceeding under the Disciplinary Regulations in relation to that person may proceed to its conclusion even though his or her period of secondment has expired or been terminated.

(3) No disciplinary action may be taken against a person referred to in *subsection (1)*, but the Garda Commissioner shall transmit to the Chief Constable the prescribed material relating to the person.

(4) The Garda Commissioner shall inform the Minister of any transmission of documents under *subsection (3)*.

**57.**—(1) The Minister may, by regulations made with the consent of the Minister for Health and Children, provide for the keeping of a record of any of the following events occurring outside the State while a member of the Garda Síochána is on international service or is on secondment to the Police Service of Northern Ireland:

Records relating to members serving outside the State.

- (a) the member's death;
- (b) the death, in such circumstances as may be specified in the regulations, of the member's spouse or of such other relatives as may be specified in the regulations;
- (c) the birth, in such circumstances as may be specified in the regulations, of a child of the member.

(2) Records kept pursuant to regulations made under this section must be—

- (a) authenticated in such manner and by such person as may be specified for the purpose in those regulations, and
- (b) transmitted to an tArd-Chláráitheoir in such manner as may be specified in the regulations.

(3) Every regulation under this section shall be laid before each House of the Oireachtas as soon as practicable after it is made.

(4) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which a regulation is laid before it under *subsection (3)*, annul the regulation.

**58.**—(1) An tArd-Chláráitheoir shall maintain a register to be known as the Garda Síochána Deaths Register Book (in this section referred to as the Deaths Book) and shall cause an entry to be made in the Deaths Book of each record of a death transmitted in accordance with *section 57(2)(b)*.

Duties of Ard-Chláráitheoir in relation to records transmitted under this Act.

(2) An tArd-Chláraitheoir shall maintain a register to be known as the Garda Síochána Births Register Book (in this section referred to as the Births Book) and shall cause an entry to be made in the Births Book of each record of a birth transmitted in accordance with *section 57(2)(b)*.

(3) An entry made under *subsection (1)* or *(2)* must be in such form as may be specified in the regulations under *section 57* and must contain such particulars as may be specified in those regulations.

(4) For the purposes of the Civil Registration Act 2004, the Deaths Book and the Births Book are deemed to be register books within the meaning of those Acts, but *section 27(3)* of the Births and Deaths Registration Act (Ireland) 1880 has, in its application to the Deaths Book and the Births Book, effect as if—

- (a) “upon payment of the appointed fee, and” were deleted, and
- (b) the reference to a statutory declaration made by one or more persons required by that Act to give information concerning the birth or death referred to in that paragraph were a reference to a statement in writing made by a person specified under *section 57(2)(a)*.

(5) An tArd-Chláraitheoir shall keep at his or her office an index to the Deaths Book and an index to the Births Book.

(6) Any person is entitled to search the index to the Deaths Book and the index to the Births Book and to have a certified copy of an entry in either book or of items contained in the entry on the same terms and conditions in all respects as to fees and otherwise that are applicable under the Civil Registration Act 2004 or any other enactment in respect of the registers of births and deaths.

(7) Fees payable under *subsection (6)* are to be collected and disposed of in the same manner as fees payable under the Civil Registration Act 2004.

## CHAPTER 9

### *Offences and Disclosure of Information*

Causing  
disaffection.

**59.—(1)** A person is guilty of an offence if he or she induces, or does any act calculated to induce, any member of the Garda Síochána to withhold his or her services or to commit a breach of discipline.

(2) A person guilty of an offence under *subsection (1)* is liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

**60.**—(1) A person is guilty of an offence if he or she—

- (a) impersonates a member of the Garda Síochána, or
- (b) makes any statement or does any act calculated falsely to suggest that he or she is such a member.

Offence of impersonating member of Garda Síochána.

(2) A person guilty of an offence under *subsection (1)* is liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

**61.**—(1) A person is guilty of an offence if he or she, not being a member of the Garda Síochána—

Other offences relating to impersonation.

- (a) has in his or her possession any article of Garda uniform or any equipment supplied to a member of the Garda Síochána and is not able satisfactorily to account for possessing it,
- (b) puts on or wears—
  - (i) without the Garda Commissioner's permission, any article of Garda uniform of any rank or member of the Garda Síochána, or
  - (ii) without reasonable excuse, any imitation of such article or uniform,

or
- (c) for the purpose of doing or procuring to be done any act that he or she would not by law be entitled to do or procure to be done of his or her own authority, assumes the name, designation or description of any rank of or any member of the Garda Síochána.

(2) A person is guilty of an offence if he or she, without lawful authority, has in his or her possession or uses in connection with any trade, business, calling or profession or for any other purpose any article, equipment or vehicle containing or having on it any distinctive badge or crest so closely resembling the badge or crest of the Garda Síochána as to be likely to deceive.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(4) Nothing in this section prevents the wearing of any uniform or dress in—

- (a) a performance in a theatre, on film or on television or other media, or
- (b) with the prior approval of the Garda Commissioner, a public place in the course of making a film, television or other media production.

Confidentiality of certain information.

**62.—(1)** A person who is or was a member of the Garda Síochána or of its civilian staff or who is or was engaged under contract or other arrangement to work with or for the Garda Síochána shall not disclose, in or outside the State, any information obtained in the course of carrying out duties of that person's office, employment, contract or other arrangement if the person knows the disclosure of that information is likely to have a harmful effect.

(2) For the purpose of this section, the disclosure of information referred to in *subsection (1)* does not have a harmful effect unless it—

- (a) facilitates the commission of an offence,
- (b) prejudices the safekeeping of a person in legal custody,
- (c) impedes the prevention, detection or investigation of an offence,
- (d) impedes the apprehension or prosecution of a suspected offender,
- (e) prejudices the security of any system of communication of the Garda Síochána,
- (f) results in the identification of a person—
  - (i) who is a witness in a criminal proceeding or who has given information in confidence to a member of the Garda Síochána, and
  - (ii) whose identity is not at the time of the disclosure a matter of public knowledge,
- (g) results in the publication of information that—
  - (i) relates to a person who is a witness to or a victim of an offence, and
  - (ii) is of such a nature that its publication would be likely to discourage the person to whom the information relates or any other person from giving evidence or reporting an offence,
- (h) results in the publication of personal information and constitutes an unwarranted and serious infringement of a person's right to privacy,
- (i) reveals information provided in confidence by another state, an international organisation, another police service or an intelligence service, or
- (j) affects adversely the international relations or interests abroad of the State, including those with Northern Ireland.

(3) For the purpose of this section, a person is presumed, unless the contrary is proved, to know that disclosure of information referred to in *subsection (1)* is likely to have a harmful effect if a reasonable person would, in all the circumstances, be aware that its disclosure could have that effect.

(4) *Subsection (1)* does not prohibit a person from disclosing information referred to in that subsection if the disclosure—

(a) is made to—

- (i) the Minister,
- (ii) the Attorney General,
- (iii) the Director of Public Prosecutions,
- (iv) the Chief State Solicitor,
- (v) the Criminal Assets Bureau,
- (vi) the Comptroller and Auditor General,
- (vii) the Ombudsman Commission or an officer of the Commission,
- (viii) the Garda Síochána Inspectorate or an officer of the Inspectorate,
- (ix) the Revenue Commissioners, or
- (x) a member of either of the Houses of the Oireachtas where relevant to the proper discharge of the member's functions,

(b) is made to a court,

(c) is made to a tribunal appointed under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002,

(d) is made in the course of, and in accordance with, the duties of that person's office or employment or his or her duties under a contract or other arrangement to work with or for the Garda Síochána,

(e) is authorised by the Garda Commissioner, or

(f) is otherwise authorised by law.

(5) A person who contravenes *subsection (1)* is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(6) A person who contravenes *subsection (1)* and who receives any gift, consideration or advantage as an inducement to disclose the information to which the contravention relates or as a reward for, or

otherwise on account of, the disclosure of that information is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €75,000 or imprisonment for a term not exceeding 7 years or both.

(7) The provisions of this section are in addition to, and not in substitution for, the provisions of the Official Secrets Act 1963.

(8) In this section “personal information” has the meaning given to it by section 2(1) of the Freedom of Information Act 1997 and includes personal information relating to a deceased individual.

### PART 3

#### ESTABLISHMENT AND FUNCTIONS OF GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

Establishment day. **63.**—The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Part.

Establishment of Ombudsman Commission. **64.**—(1) On the establishment day, a body corporate to be known as Coimisiún Ombudsman an Gharda Síochána or, in the English language, the Garda Síochána Ombudsman Commission stands established to perform the functions assigned to it by this Act.

(2) The Ombudsman Commission has, under its corporate name, perpetual succession and an official seal and may—

- (a) sue and be sued in its corporate name,
- (b) acquire, hold and dispose of land or an interest in land, and
- (c) acquire, hold and dispose of any other property.

Membership of Ombudsman Commission. **65.**—(1) The Ombudsman Commission is to consist of 3 members, all of whom are to be appointed by the President on—

- (a) the nomination of the Government, and
- (b) the passage of resolutions by Dáil Éireann and Seanad Éireann recommending their appointment.

(2) One of the members shall be appointed as chairperson.

(3) At least one of the 3 members shall be a woman and at least one of them shall be a man.

(4) In considering the nomination of a person to be a member of the Ombudsman Commission, the Government shall satisfy themselves that the person has the appropriate experience, qualifications, training or expertise for appointment to a body having the functions of the Commission.

(5) A person who holds judicial office in a superior court may, without relinquishing that office, be appointed, with his or her consent, as the chairperson of the Ombudsman Commission, but, unless otherwise provided by the terms of the appointment, he or she shall not, while a member, be required to carry out duties under statute as the holder of that judicial office.

(6) *Schedule 4* has effect if a person who holds judicial office in a superior court is appointed as the chairperson of the Ombudsman Commission.

(7) A person is not eligible to be nominated or appointed under this section if he or she—

- (a) is a member of either House of the Oireachtas,
- (b) is entitled under the rules of procedure of the European Parliament to sit in that Parliament,
- (c) is a member of a local authority, or
- (d) is or has been a member of the Garda Síochána.

(8) The first appointments to the Ombudsman Commission become effective on the establishment day.

(9) If the chairperson is temporarily unable to carry out the duties of office, the other 2 members shall determine which of them is to act, for all or part of the period of inability, in the chairperson's place.

(10) For as long as a member is acting in place of the chairperson under *subsection (9)* references in this Act to the chairperson of the Ombudsman Commission are to be read as references to that member.

**66.**—(1) Subject to *section 68*, a member of the Ombudsman Commission holds office for the period, exceeding 3 years but not exceeding 6 years, that the Government may determine at the time of appointment. Terms and conditions of office.

(2) A member is eligible for reappointment for a second term.

(3) A member holds office on the terms and conditions relating to remuneration (including allowances for expenses, benefits in kind and superannuation) or other matters that may be determined by the Government at the time of appointment or reappointment.

(4) The Ombudsman Commission may act notwithstanding one or more than one vacancy among its members, including a vacancy that results in *section 65(3)* not being complied with.

(5) Whenever a vacancy occurs in the membership of the Ombudsman Commission caused by the resignation, removal from office or the death of a member, the vacancy is to be filled by appointment in the manner specified in *section 65*.

(6) A member who is appointed to fill a vacancy caused by the resignation, removal from office or the death of a member holds office for the remainder of the term of office of the replaced member.

Objectives,  
functions and  
powers.

**67.—**(1) The objectives of the Ombudsman Commission are—

- (a) to ensure that its functions are performed in an efficient and effective manner and with full fairness to all persons involved in complaints and investigations under *Part 4* concerning the conduct of members of the Garda Síochána, and
- (b) to promote public confidence in the process for resolving those complaints.

(2) The functions of the Ombudsman Commission are—

- (a) to receive complaints made by members of the public concerning the conduct of members of the Garda Síochána,
- (b) to carry out the duties and exercise the powers assigned to it under *Part 4* in relation to those complaints,
- (c) to issue guidelines for the informal resolution under *section 90* of certain categories of complaints and to make procedural rules for investigations under *section 95*,
- (d) to report the results of its investigations under *Part 4* to the Garda Commissioner and, in appropriate cases, to the Director of Public Prosecutions and, if it reports to the Director, to send him or her a copy of each investigation file,
- (e) to conduct, in accordance with *section 102*, other investigations of matters concerning the conduct of members of the Garda Síochána,
- (f) to examine practices, policies and procedures of the Garda Síochána in accordance with *section 106*,
- (g) to draw up with the Garda Commissioner protocols in accordance with *section 108*, and
- (h) to carry out any other duties and exercise any other powers assigned to it under this Act.

(3) The Ombudsman Commission has all powers that are necessary for, or incidental to, the performance of its functions under this Act.

(4) Subject to this Act, the Ombudsman Commission shall be independent in the performance of its functions.

(5) The chairperson of the Ombudsman Commission shall manage and control generally the officers, administration and business of the Commission.

Resignation or  
removal of  
members in certain  
cases.

**68.—**(1) A member of the Ombudsman Commission may resign from office at any time by letter addressed to the President and copied to the Minister, and the resignation takes effect on the date the President receives the letter.

(2) The President may remove a member of the Ombudsman Commission from office, but only for stated misbehaviour or for incapacity and then only on resolutions passed by Dáil Éireann and Seanad Éireann calling for the member's removal.



(3) A person ceases to be a member of the Ombudsman Commission as soon as he or she—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or of the European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority.

**69.**—(1) The Ombudsman Commission shall, as soon as practicable after its establishment, provide itself with a seal.

Seal of Ombudsman Commission.

(2) The seal of the Ombudsman Commission must be authenticated by the signature of—

- (a) a member of the Commission, and
- (b) an officer of the Commission authorised by it to act in that behalf.

(3) Judicial notice is to be taken of the seal of the Ombudsman Commission and every document purporting to be an instrument made by the Commission and to be sealed with its seal (purporting to be authenticated in accordance with this section) is to be received in evidence and is deemed to be such instrument without proof unless the contrary is shown.

**70.**—(1) The quorum for a meeting of the Ombudsman Commission is 2 members.

Meetings and business of Ombudsman Commission.

(2) Each question at a meeting of the Ombudsman Commission shall be determined by a majority of the votes of the members present and voting on the question.

(3) In the case of an equal division of votes, the chairperson or other member presiding at the meeting has a second or casting vote.

(4) Subject to this Act, the Ombudsman Commission may regulate its own procedures.

**71.**—(1) The Ombudsman Commission may appoint such numbers of persons as its officers as may be approved by the Minister with the consent of the Minister for Finance.

Officers of Ombudsman Commission.

(2) The Ombudsman Commission shall determine the grades of its officers and the numbers of officers in each grade, as may be approved by the Minister with the consent of the Minister for Finance.

(3) Officers of the Ombudsman Commission are civil servants in the Civil Service of the State.

(4) The Ombudsman Commission is the appropriate authority (within the meaning of the Civil Service Commissioners Act 1956

and the Civil Service Regulation Acts 1956 to 1996) in relation to its officers.

Transfer of staff to Ombudsman Commission.

**72.—**(1) Any member of the staff of the Department of Justice, Equality and Law Reform who on the establishment day is engaged in duties in the Garda Síochána Complaints Board may be designated by order of the Minister and shall, on being so designated, be transferred to and become an officer of the Ombudsman Commission.

(2) Before making an order for the purpose of *subsection (1)*, the Minister shall—

- (a) notify in writing any recognised trade union or staff association concerned of the Minister's intention to do so, and
- (b) consider, within the time that may be specified in the notification, any representations made by that trade union or staff association in relation to the matter.

(3) *Schedule 2* has effect in relation to staff transferred under this section.

Designation of officers and others for purpose of investigations under *Part 4*.

**73.—**(1) A person who is appointed as or becomes an officer of the Ombudsman Commission under *section 71* or *72* or who is engaged by it under *section 74* may be designated in writing by the Commission for the purpose of performing functions under any provisions of *Part 4* specified in the instrument of designation.

(2) The Ombudsman Commission shall provide each person designated under this section with a warrant card identifying the person and specifying the provisions of *Part 4* in relation to which the person is authorised to perform functions.

(3) A person provided with a warrant card shall carry it at all times while performing functions under *Part 4* and, if requested, shall produce the card for inspection.

Special assistance.

**74.—**(1) The Ombudsman Commission may, for the purposes of performing its functions under this Act, enter into arrangements as follows:

- (a) with the Garda Commissioner for the engagement of members of the Garda Síochána below the rank of Garda Commissioner who have applied to the Commissioner to be considered for service under such arrangement;
- (b) with any police service outside the State for the engagement of police officers from that service;
- (c) with any other body for the engagement of other persons.

(2) Arrangements under *subsection (1)* may provide for the persons concerned to be engaged (on contract or otherwise) for a period of temporary service with the Ombudsman Commission.

(3) If designated by the Ombudsman Commission for the purpose of conducting an investigation under *section 98* or under that section as applied by *section 102*, a person who is a member of the Garda Síochána or another police service and who is engaged under this

section for a period of temporary service with the Commission, has, in relation to that investigation, only the powers, immunities and privileges conferred and the duties imposed under *sections 98 and 99*.

(4) During a period of temporary service with the Ombudsman Commission, a member of the Garda Síochána is not subject to the direction or control of the Garda Commissioner, but—

- (a) the member is entitled to continue to be paid as a member of the Garda Síochána,
- (b) the member's service with the Commission is considered to be service with the Garda Síochána for pension, seniority and promotion purposes, and
- (c) the member is entitled to claim compensation under the Garda Síochána Compensation Acts 1941 and 1945 for malicious injuries received in the course of, or in relation to, the carrying out of duties with the Commission.

**75.**—(1) Subject to *subsection (2)*, the chairperson of the Ombudsman Commission may, in writing, delegate any of the Commission's functions under this Act, including its functions under *Part 4*, to one, or more than one, of—

Delegation of Ombudsman Commission's functions.

- (a) its members or officers, or
- (b) the persons engaged under *section 74*.

(2) Functions under *sections 99 and 108* may not be delegated to anyone other than a member of the Ombudsman Commission.

(3) A delegation under this section may—

- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
- (b) be made subject to conditions or restrictions, and
- (c) be revoked or varied by the Ombudsman Commission at any time.

(4) The delegation of a function does not preclude the Ombudsman Commission from performing the function.

(5) Where the Ombudsman Commission's functions under a provision of this Act are delegated to a person, any references in that provision to the Commission are to be read as references to that person.

(6) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Ombudsman Commission.

**76.**—The Minister may, in each financial year, pay to the Ombudsman Commission, out of money provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Finance, determines towards the expenses of the Commission in performing its functions.

Grants to Ombudsman Commission.

Accounts and audit.

**77.**—(1) The Ombudsman Commission shall keep, in such form and in respect of such accounting periods as may be approved by the Minister with the consent of the Minister for Finance, all proper and usual accounts of money received or expended by it, including an income and expenditure account and a balance sheet.

(2) Not later than 3 months after the end of the accounting period to which the accounts relate, the Ombudsman Commission shall submit accounts kept under this section to the Comptroller and Auditor General for audit.

(3) Immediately after the audit, the Ombudsman Commission shall present to the Minister copies of—

- (a) the audited accounts, including the income and expenditure account, the balance sheet and such other (if any) accounts kept under this section as the Minister, after consulting with the Minister for Finance, may direct, and
- (b) the Comptroller and Auditor General's report on the accounts.

(4) As soon as practicable after presentation of the audited accounts and the Comptroller and Auditor General's report, the Minister shall cause copies of them to be laid before each House of the Oireachtas.

Accountability of Ombudsman Commission to Committee of Public Accounts.

**78.**—(1) A member of the Ombudsman Commission nominated by it for the purpose shall, whenever required to do so by the Committee of Public Accounts, give evidence to that Committee on—

- (a) the regularity and propriety of the transactions recorded, or required to be recorded, in any book or other record of account subject to audit by the Comptroller and Auditor General that the Commission is required by this Act to prepare,
- (b) the economy and efficiency of the Commission in the use of its resources,
- (c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Commission referred to in—
  - (i) a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or
  - (ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann in so far as the report relates to a matter specified in any of *paragraphs (a) to (c)*.

(2) A member of the Ombudsman Commission who gives evidence under this section shall not—

- (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy, or

- (b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

79.—(1) In this section “committee” means—

Accountability to other Oireachtas committees.

- (a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee of Public Accounts, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann), or

- (b) a sub-committee of a committee as defined in *paragraph (a)*.

(2) Subject to *subsection (3)*, a member of the Ombudsman Commission nominated by it for the purpose shall, at the written request of a committee, attend before it to give account for the general administration of the Commission.

(3) The member of the Ombudsman Commission shall not be required to give account before a committee for any matter that is or is likely to be, the subject of proceedings before a court or tribunal in the State.

(4) The member of the Ombudsman Commission shall, if of the opinion that *subsection (3)* applies to a matter about which he or she is requested to give an account before a committee, inform the committee of that opinion and the reasons for the opinion.

(5) The information required under *subsection (4)* must be given to the committee in writing unless it is given when the member of the Ombudsman Commission is before the committee.

(6) If, on being informed of the member of the Ombudsman Commission’s opinion about the matter, the committee decides not to withdraw its request relating to the matter, the High Court may, on application under *subsection (7)*, determine whether *subsection (3)* applies to the matter.

(7) Either the Ombudsman Commission or the committee may apply in a summary manner to the High Court for a determination under *subsection (6)*, but only if the application is made within 21 days after the date on which the member of the Commission is informed of the committee’s decision not to withdraw its request.

(8) Pending the determination of an application under *subsection (7)*, the member of the Ombudsman Commission shall not attend before the committee to give account for the matter that is the subject of the application.

(9) If the High Court determines that *subsection (3)* applies to the matter, the committee shall withdraw its request in so far as it relates to the matter, but if the Court determines that *subsection (3)* does not apply, the member of the Ombudsman Commission shall attend before the committee to give account for the matter.

(10) In carrying out duties under this section, a member of the Ombudsman Commission shall not—

- (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy, or
- (b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

Various reports by Ombudsman Commission.

**80.**—(1) Not later than March 31 in each year, the Ombudsman Commission shall submit to the Minister a report on its activities in the immediately preceding year.

(2) The Ombudsman Commission shall, within 2 years from the date of its establishment, submit to the Minister a report on—

- (a) the effectiveness of the Commission, and
- (b) the adequacy of the functions assigned to it by this Act.

(3) The report submitted under *subsection (2)* may contain recommendations for improving the effectiveness of the Ombudsman Commission.

(4) At the end of each 5 year period commencing with the date of its establishment, the Ombudsman Commission shall submit to the Minister a report reviewing the general performance of its functions in the preceding 5 years.

(5) The Ombudsman Commission may make any other reports that it considers appropriate for drawing to the Minister's attention matters that have come to its notice and that, in its opinion, should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Minister.

(6) As soon as practicable after receiving a report under this section, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

Confidentiality of information obtained by Ombudsman Commission.

**81.**—(1) A person who is or was a member or officer of the Ombudsman Commission or who is or was engaged under contract or other arrangement by the Commission shall not disclose, in or outside the State, information obtained in carrying out the duties of that person's office or of his or her contract or other arrangement with the Commission if the disclosure is likely to have a harmful effect.

(2) For the purpose of this section, the disclosure of information referred to in *subsection (1)* does not have a harmful effect unless it—

- (a) impedes an investigation under *Part 4* or otherwise prejudices the effective performance of the Ombudsman Commission's functions,
- (b) results in the identification of a person—
  - (i) who is a complainant or the subject of a complaint, and
  - (ii) whose identity is not at the time of the disclosure a matter of public knowledge,

- (c) results in the publication of information that—
- (i) relates to a person who is a complainant or the subject of a complaint or who has given evidence to the Ombudsman Commission, and
  - (ii) is of such a nature that its publication would be likely to discourage the person to whom the information relates or any other person from reporting a complaint or giving evidence to the Ombudsman Commission,
- or
- (d) results in the publication of personal information (as defined in the Freedom of Information Act 1997) obtained in the course of an investigation and constitutes an unwarranted and serious infringement of a person's right to privacy.

(3) For the purpose of this section, a person is presumed, unless the contrary is proved, to know that disclosure of information referred to in *subsection (1)* is likely to have a harmful effect if a reasonable person would, in all the circumstances, be aware that its disclosure could have that effect.

(4) *Subsection (1)* does not prohibit a person referred to in that subsection from disclosing information if the disclosure—

- (a) is made to—
- (i) the Garda Commissioner,
  - (ii) the Minister,
  - (iii) the Attorney General,
  - (iv) the Director of Public Prosecutions,
  - (v) the Chief State Solicitor,
  - (vi) the Criminal Assets Bureau,
  - (vii) the Comptroller and Auditor General,
  - (viii) the Garda Síochána Inspectorate or an officer of the Inspectorate,
  - (ix) the Revenue Commissioners, or
  - (x) a member of either of the Houses of the Oireachtas where relevant to the proper discharge of that member's functions,
- (b) is made under *Part 4* to a person in relation to—
- (i) a complaint made by the person, or
  - (ii) an investigation concerning the person,
- (c) is made to a court,

(d) is made to a tribunal appointed under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 or a commission of investigation established under the Commissions of Investigation Act 2004,

(e) is made in the course of, and in accordance with, the duties of that person's office or employment or of his or her duties under a contract or other arrangement to work with or for the Ombudsman Commission,

(f) is authorised by the Ombudsman Commission, or

(g) is otherwise authorised by law.

(5) A person who contravenes *subsection (1)* is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(6) A person who contravenes *subsection (1)* and who receives any gift, consideration or advantage as an inducement to disclose the information to which the contravention relates or as a reward for, or otherwise on account of, the disclosure of that information is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €75,000 or imprisonment for a term not exceeding 7 years or both.

(7) The provisions of this section are in addition to, and not in substitution for, the provisions of the Official Secrets Act 1963.

## PART 4

### COMPLAINTS, INVESTIGATIONS AND OTHER PROCEDURES

Definitions (*Part 4*). **82.—(1)** In this Part, unless the context otherwise requires—

“admissible complaint” means a complaint determined by the Ombudsman Commission under *section 87* to be admissible;

“breach of discipline” means conduct specified in *Schedule 5*;

“complainant” means—

(a) a person who makes a complaint,

(b) a person on whose behalf a complaint is made, and



- (c) where a complaint is made on behalf of another by a person authorised to do so under *section 83*, the authorised person.

“conduct” includes any act or omission and a reference to the occurrence of any conduct includes the doing of an act or the making of an omission;

“disciplinary proceeding” means a proceeding conducted in accordance with the Disciplinary Regulations;

“Garda Commissioner” includes a Deputy Garda Commissioner or an Assistant Garda Commissioner acting in place of the Garda Commissioner under *section 32*;

“member of the Garda Síochána” does not include the Garda Commissioner;

“member of the public” means a person other than a member of the Garda Síochána or the Garda Commissioner;

“misbehaviour” means conduct that constitutes an offence or a breach of discipline;

“serious harm” means injury that—

- (a) creates a substantial risk of death,
- (b) causes serious disfigurement, or
- (c) causes substantial loss or impairment of mobility of the body as a whole or of the function of any particular bodily member or organ.

(2) A reference in any provision of this Part to a designated officer of the Ombudsman Commission is to a person designated under *section 73* for the purpose of performing functions under the provision of this Part.

**83.**—(1) Subject to *section 84*, a complaint concerning any conduct of a member of the Garda Síochána that is alleged to constitute misbehaviour may be made to the Ombudsman Commission—

How complaints are made by members of the public.

- (a) by a member of the public who is directly affected by, or who witnesses, the conduct, or
- (b) on behalf of that member of the public, by any other person if the member of the public on whose behalf the complaint is being made consents in writing or orally to its being made or is, because of age or a mental or physical condition, incapable of giving consent.

(2) The complaint may be made directly to the Ombudsman Commission or by stating, giving or sending it—

- (a) to the Garda Commissioner,
- (b) to any member of the Garda Síochána at a Garda Síochána station, or
- (c) to a member at or above the rank of chief superintendent at a place other than a Garda Síochána station,

for forwarding under *section 85* to the Ombudsman Commission.

(3) A complaint may be made directly to the Ombudsman Commission by stating it to an officer of the Commission or by giving or sending it to an officer or member of the Commission.

Time limits for making complaints.

**84.—**(1) A complaint must be made within the period of 6 months beginning on the date of the conduct giving rise to the complaint or within any extension of that period allowed under *subsection (2)*.

(2) The Ombudsman Commission may extend the time limit for making a complaint if it considers that there are good reasons for doing so.

(3) A complaint is considered to be made as soon as it is received by—

- (a) the Ombudsman Commission, if made directly to it, or
- (b) the Garda Commissioner or a member of the Garda Síochána, if made by stating, giving or sending it as described in *section 83(2)* for forwarding to the Commission.

If complaint is made to Garda Síochána.

**85.—**(1) When the Garda Commissioner or a member of the Garda Síochána receives a complaint under *section 83(2)*, he or she shall immediately—

- (a) record the complaint and the date and time of its receipt,
- (b) provide the complainant with a written acknowledgement of its receipt, and
- (c) forward to the Ombudsman Commission a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

(2) If the complaint is made to a member of the Garda Síochána at a Garda Síochána station, the member in charge of the station at the time the complaint is received shall ensure that the Garda Commissioner—

- (a) is notified of the complaint, and
- (b) is sent a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

(3) If the complaint is made to a member at or above the rank of chief superintendent at a place other than a Garda Síochána station, that member shall ensure that the Garda Commissioner—

- (a) is notified of the complaint, and
- (b) is sent a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

If complaint is made directly to Ombudsman Commission.

**86.—**(1) When the Ombudsman Commission receives a complaint directly from a person under *section 83(2)*, an officer of the Commission shall immediately—

- (a) record the complaint and the date and time of its receipt,

- (b) provide the complainant with a written acknowledgement of its receipt, and
- (c) notify the Garda Commissioner of the complaint.

(2) However, if it appears to the officer that the Garda Commissioner will be notified under *section 88* in relation to the complaint within 24 hours after it was received by the Ombudsman Commission, the officer need not comply with *subsection (1)(c)* of this section.

**87.**—(1) On receiving a complaint directly from a complainant or receiving a copy or record of a complaint from the Garda Commissioner or a member of the Garda Síochána, the Ombudsman Commission shall determine whether the complaint is admissible or inadmissible.

Determination of whether complaint is admissible.

(2) Subject to *subsection (3)*, a complaint concerning the conduct of a member of the Garda Síochána is admissible if—

- (a) the complaint is made by or on behalf of a member of the public authorised under *section 83* to make the complaint,
- (b) the conduct alleged would, if substantiated, constitute misbehaviour by the member of the Garda Síochána,
- (c) the complaint is made within the time allowed under *section 84*, and
- (d) the complaint is not frivolous or vexatious.

(3) The following matters are not admissible complaints:

- (a) a complaint in so far as it relates to the general direction and control of the Garda Síochána by the Garda Commissioner;
- (b) a complaint about the conduct of a member of the Garda Síochána while the member was not on duty, unless the conduct alleged would, if proved, be likely to bring discredit on the Garda Síochána.

(4) A complaint concerning a person who, at the time of the conduct that is the subject matter of the complaint, was a member of the Garda Síochána is not inadmissible by reason only that the person—

- (a) is, at the time the complaint is made, no longer a member, or
- (b) retires or resigns from the Garda Síochána at any time after the making of the complaint.

(5) Nothing in this section is to be taken to limit the application of *section 93*.

**88.**—(1) On determining under *section 87* that a complaint is inadmissible, the Ombudsman Commission shall—

- (a) notify, in writing, the complainant, the member of the Garda Síochána whose conduct is the subject of the complaint and the Garda Commissioner of its determination,

Notification following determination of whether complaint is admissible.

- (b) include in the notification the reason for the determination, and
- (c) take no further action in relation to the complaint.

(2) On determining under *section 87* that a complaint is admissible, the Ombudsman Commission shall as soon as practicable—

- (a) notify, in writing, the complainant and the Garda Commissioner of its determination, and
- (b) where the complaint was made directly to the Commission, send the Garda Commissioner a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

(3) On being notified of an admissible complaint concerning the conduct of a member of the Garda Síochána, the Garda Commissioner shall, subject to *section 89(1)(b)*, notify the member that a complaint has been made and specify the nature of the complaint and the name of the complainant.

Duty to preserve evidence relating to complaint.

**89.**—(1) The Garda Commissioner—

- (a) shall ensure that members of the Garda Síochána, on becoming aware of a complaint, take any lawful measures that appear to them to be necessary or expedient for the purpose of obtaining and preserving evidence relating to the conduct that is the subject matter of the complaint, and
- (b) may postpone notifying a member of the Garda Síochána whose conduct is the subject matter of the complaint until those measures are taken.

(2) *Subsection (1)* applies whether or not a determination has been made under *section 87* about the admissibility of the complaint.

Resolution of complaint by mediation or other informal means.

**90.**—(1) The Ombudsman Commission may issue guidelines providing for the resolution, by mediation or other informal means, of admissible complaints other than—

- (a) complaints to which *section 91* applies,
- (b) complaints about conduct that appears to constitute an offence, and
- (c) complaints determined in accordance with the guidelines not to be suitable for resolution by mediation or other informal means.

(2) The guidelines may include provision for—

- (a) a determination to be made by the Ombudsman Commission about whether a complaint is or is not suitable for resolution by mediation or other informal means,
- (b) the persons who may attempt to mediate or otherwise resolve the complaint,

- (c) the recording of the manner in which the complaint was resolved and the complainant's agreement to the resolution, and
- (d) any other matters that the Ombudsman Commission considers necessary or appropriate for facilitating the resolution of a complaint by mediation or other informal means.

(3) No attempt may be made to resolve a complaint by mediation or other informal means without the consent of the complainant and the member of the Garda Síochána whose conduct is the subject matter of the complaint.

(4) A consent given by a member of the Garda Síochána for the purpose of this section is not to be taken as an admission of any allegation made in a complaint against the member.

(5) No answer or statement made, in the course of attempting to resolve a complaint pursuant to the guidelines, by the complainant or by the member of the Garda Síochána whose conduct is the subject matter of the complaint may—

- (a) be communicated to the Garda Commissioner or any other person (except the persons participating in the attempt to resolve the complaint), or
- (b) be used in any civil or criminal proceedings.

(6) If a complaint is resolved pursuant to the guidelines—

- (a) the Ombudsman Commission shall notify the Garda Commissioner of the resolution of the complaint,
- (b) any record of the complaint held by the Garda Síochána shall be expunged, and
- (c) the member whose conduct was the subject matter of the complaint shall not be discriminated against by way of dismissal, reduction in rank, denial of an opportunity for promotion or otherwise by reason only of the complaint.

(7) The Ombudsman Commission may revise any guidelines issued under this section or may withdraw those guidelines and issue new guidelines.

(8) For the purpose of *subsection (5)*, “civil or criminal proceedings” includes disciplinary proceedings.

**91.—(1)** If a complaint concerns the death of, or serious harm to, a person as a result of Garda operations or while in the custody or care of the Garda Síochána, the Ombudsman Commission shall immediately direct a designated officer to—

Investigation of complaints concerning death of, or serious harm to, a person.

- (a) examine the complaint for the purpose of recommending whether the complaint should be investigated under *section 95* or *98*, and
- (b) report his or her recommendation to the Commission as soon as practicable.

(2) On receiving the designated officer's recommendation, the Ombudsman Commission shall either—

- (a) conduct an investigation under *section 95*, or
- (b) direct a designated officer of the Commission to investigate the complaint under *section 98*.

If other complaints are not resolved informally or if they warrant investigation.

**92.**—If an admissible complaint is not resolved pursuant to the guidelines under *section 90* or is a complaint referred to in *paragraphs (a) to (c) of section 90(1)*, the Ombudsman Commission may, as it considers appropriate—

- (a) refer the complaint to the Garda Commissioner to be dealt with in accordance with *section 94*,
- (b) conduct an investigation under *section 95*, but, subject to *section 95(2)*, only if the conduct alleged in the complaint does not appear to constitute an offence, or
- (c) direct a designated officer of the Commission to investigate the complaint under *section 98*.

Power to discontinue investigation.

**93.**—(1) Notwithstanding any other provision of this Act, the Ombudsman Commission may direct that the investigation of a complaint be discontinued if—

- (a) as a result of information obtained after the complaint was determined to be admissible, the Commission considers that the complaint is frivolous or vexatious,
- (b) the Commission considers that the complaint was made in the knowledge that it was false or misleading, or
- (c) having regard to all the circumstances, the Commission considers that further investigation is not necessary or reasonably practicable.

(2) Where a direction is made under *subsection (1)* in relation to a complaint, the Ombudsman Commission shall notify in writing the following of its decision and the reason:

- (a) the complainant;
- (b) the member of the Garda Síochána whose conduct was the subject matter of the complaint;
- (c) the Garda Commissioner.

If complaint is referred to Garda Commissioner.

**94.**—(1) On referral of a complaint under *section 92(a)*, the Garda Commissioner shall—

- (a) appoint a member of the Garda Síochána to investigate the complaint under the Disciplinary Regulations, and
- (b) ensure that the appointed member has not been involved in any capacity in relation to an earlier aspect of the case.

(2) The Ombudsman Commission may require that no appointment be made under this section without its prior approval of the member whom the Garda Commissioner proposes to appoint.

(3) The Ombudsman Commission may decide, either on referring the complaint under *section 92(a)* or at any time during the investigation, to supervise the investigation of a complaint if it considers it desirable in the public interest to do so.

(4) The Ombudsman Commission shall notify the Garda Commissioner of its intention to supervise the investigation of a complaint.

(5) If the investigation is supervised, the Ombudsman Commission may do one or more of the following:

- (a) require the appointed member to keep it informed of the progress of the investigation;
- (b) require the appointed member to submit to it such interim reports at such times and in relation to such matters as the Commission may direct;
- (c) arrange for a designated officer of the Commission to be present during any interview conducted by the appointed member in the course of the investigation;
- (d) direct the appointed member to investigate further any aspect of the complaint.

(6) If the investigation is supervised, the appointed member shall submit a report on the results of the investigation to the Ombudsman Commission as soon as practicable after completing the investigation and within the time limit that the Commission may specify for submission of the report.

(7) If the Ombudsman Commission, after considering the report submitted under *subsection (6)*, is of the opinion that a breach of the Disciplinary Regulations has been committed by the member of the Garda Síochána whose conduct was under investigation, it shall make a report in accordance with *section 97* to the Garda Commissioner.

(8) If the Ombudsman Commission, after considering the report submitted under *subsection (6)*, is of the opinion that the conduct under investigation may constitute an offence by the member of the Garda Síochána concerned, the Commission shall—

- (a) direct a designated officer to investigate the complaint under *section 98*, or
- (b) comply with *section 101(2)* as though the report had been made by a designated officer under *section 101(1)*.

(9) If the investigation is not supervised, the Garda Commissioner shall inform the Ombudsman Commission, the complainant and the member of the Garda Síochána whose conduct was under investigation of—

- (a) the results of any disciplinary proceedings instituted following the investigation or, if no such proceedings are instituted, of the results of the investigation, and

- (b) if appropriate, any action that the Garda Commissioner proposes to take in relation to that member.

(10) If dissatisfied with the results of an unsupervised investigation or with any disciplinary proceedings instituted as a result of that investigation, the complainant may request the Ombudsman Commission to review the matter.

(11) Following a review of the matter, the Ombudsman Commission may—

- (a) request the Garda Commissioner to review the investigation of the complaint and to report back to it concerning any further action that he or she proposes to take in the matter, or
- (b) if it considers it necessary to do so, either investigate the complaint under *section 95* or direct a designated officer of the Commission to investigate the complaint under *section 98*.

(12) Nothing in this section prevents the Ombudsman Commission from deciding at any time to take over the investigation of a complaint referred by it to the Garda Commissioner.

Investigation by Ombudsman Commission of complaints that do not appear to involve offences.

**95.**—(1) If the Ombudsman Commission decides to investigate a complaint about conduct that does not appear to constitute an offence, it shall give the complainant and the member of the Garda Síochána concerned an opportunity—

- (a) to be heard, in person or by a legal representative, and
- (b) to present evidence and make submissions to the Commission.

(2) *Subsection (1)* applies also in relation to a complaint about conduct that appears to constitute an offence, but that is determined on investigation under *section 98* not to constitute an offence.

(3) Subject to this section, the Ombudsman Commission may make rules governing the procedure to be followed in investigations under this section.

(4) As soon as practicable after the conclusion of an investigation under this section, the Ombudsman Commission shall make a report in accordance with *section 97* to the Garda Commissioner.

(5) An investigation of a matter under this section does not preclude the subsequent investigation of the matter under *section 98*.

Powers relating to investigation under *section 95*.

**96.**—(1) For the purpose of an investigation under *section 95*, the Ombudsman Commission—

- (a) may require a person who, in its opinion, possesses information or has a document or thing in his or her power or control that is relevant to the investigation, to provide that information, document or thing to the Commission, and
- (b) where appropriate, may require that person to attend before the Commission for that purpose,



and the person shall, subject to *subsection (4)*, comply with the requirement.

(2) A requirement under *subsection (1)* shall specify—

(a) a period within which the person is to comply with the requirement, and

(b) as appropriate—

(i) the place at which the person shall attend to give the information concerned or to which the person shall deliver the document or thing concerned, or

(ii) the place to which the person shall send the information, document or thing concerned.

(3) A person required to attend before the Ombudsman Commission under *subsection (1)*—

(a) shall answer fully and truthfully any question put to him or her by the Commission, and

(b) if so requested by the Commission, shall sign a declaration of the truth of his or her answer to the question.

(4) A person may not be required under *subsection (1)(a)* or *(3)(a)* to provide any information, document or thing that is designated, or is of a class designated, under *section 126* as relating to the security of the State, except in accordance with a direction of the Minister.

(5) If a person required under *subsection (1)(a)* or *(3)(a)* to provide any information, document or thing claims that *subsection (4)* applies in relation to the matter, the Ombudsman Commission shall refer the matter to the Minister.

(6) If the Minister determines that the disclosure of all or part of the information, document or thing specified in the requirement would not be prejudicial to the security of the State or that its disclosure is necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of the Garda Síochána, the Minister may issue a direction—

(a) specifying that all or part, as the case may be, of the document, information or thing be disclosed, and

(b) imposing any conditions or restrictions relating to the security of the State that the Minister considers appropriate.

(7) If it appears to the Ombudsman Commission that a person has failed to comply with a requirement under *subsection (1)(a)* or *(3)(a)* for any reason other than one relating to the security of the State, the Commission may apply to the Circuit Court for an order under *subsection (8)*.

(8) If satisfied after hearing the application about the person's failure to comply with the requirement in question, the Circuit Court may, subject to *subsection (9)*, make an order requiring that person to comply with the requirement.

(9) If the Circuit Court is of opinion that the requirement in question purports to require the person concerned to provide any information, document or thing—

- (a) in respect of which he or she is entitled to claim legal professional privilege, or
- (b) the disclosure of which would—
  - (i) jeopardise a person's safety, or
  - (ii) for any other reason not be in the public interest,

the Court shall, to that extent, set aside, vary or attach conditions to the requirement.

(10) Any information, document or thing provided by a person in accordance with a requirement under *subsection (1)(a)* or *(3)(a)* or with a direction under *subsection (6)* is not admissible against that person in criminal proceedings and this shall be explained to the person in ordinary language by the Ombudsman Commission.

(11) A person who fails to comply with a direction under *subsection (6)* or an order under *subsection (8)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(12) An application under *subsection (7)* to the Circuit Court shall be made to a judge of the Circuit Court for—

- (a) the circuit in which the respondent resides or ordinarily carries on any profession, business or occupation, or
- (b) if the respondent is a member of the Garda Síochána, the circuit in which that member is stationed.

(13) For the purpose of *subsection (10)*, “criminal proceedings” does not include disciplinary proceedings.

Report following investigation under *section 94* or *95*.

**97.—(1)** The Ombudsman Commission shall include in its report under *section 94(7)* or *95(4)* to the Garda Commissioner—

- (a) a statement of the facts established by the investigation under *section 94* or *95* into the conduct of the member of the Garda Síochána who is the subject of the report,
- (b) a recommendation about whether or not disciplinary proceedings should be instituted under the Disciplinary Regulations against that member,
- (c) a statement of the reasons for the recommendation, and
- (d) if the Commission recommends that those proceedings should be instituted, the particulars relating to the proceedings that the Commission considers appropriate.

(2) In any disciplinary proceedings instituted in accordance with a recommendation in a report referred to in *subsection (1)*, a document that purports to be that report—

- (a) is evidence of the facts stated in the document unless the contrary is proved, and

(b) is deemed to be such document unless the contrary is proved.

(3) The Ombudsman Commission is entitled to be notified of a decision made under the Disciplinary Regulations concerning the member of the Garda Síochána who is the subject of the report.

**98.**—(1) If directed by the Ombudsman Commission under section 91(2)(b), 92(c), 94(8)(a) or 94(11)(b) to investigate a complaint under this section, a designated officer has, in relation to the member of the Garda Síochána under investigation, for the purposes of the investigation all the powers, immunities and privileges conferred and all the duties imposed on any member of the Garda Síochána by or under any enactment or the common law, including those relating to the following matters:

Powers of designated officers of Ombudsman Commission for purpose of investigating complaints that appear to involve offences.

- (a) the entry and search of any place (other than a Garda Síochána station) pursuant to a warrant issued in accordance with law and the seizure of things authorised by the warrant;
- (b) the arrest, with or without a warrant, of a person;
- (c) the bringing of a charge against a person;
- (d) the issue of a summons to a person;
- (e) the search of a person and the taking of his or her photograph, fingerprints and palmprints;
- (f) the detention and questioning of a person;
- (g) the taking of bodily samples or other things from a person for the purpose of forensic testing.

(2) For the purpose of subsection (1), an enactment conferring a power, immunity or privilege or imposing a duty on a member of the Garda Síochána in relation to any of the matters specified in that subsection applies with the following modifications and any other necessary modifications:

- (a) subject to paragraph (c), a reference in the enactment to a member of the Garda Síochána is to be read as a reference to a designated officer of the Ombudsman Commission;
- (b) a reference in section 4 of the Criminal Justice Act 1984 or in the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987) to a member in charge of a Garda Síochána station is to be read as a reference to a designated officer of the Ombudsman Commission;
- (c) a reference in the enactment to a member of the Garda Síochána not below the rank of inspector is to be read as a reference to a member of the Ombudsman Commission.

(3) Any person who delays, obstructs or interferes with a designated officer in the exercise of the powers conferred or the carrying out of the duties imposed under this section is guilty of an offence

and is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(4) An investigation of a matter under this section does not preclude the subsequent investigation of the matter under *section 95*.

(5) For the purposes of this section—

“enactment” means a statute or statutory instrument, whether passed or made before or after the passing of this Act or any portion of such a statute or statutory instrument, but does not include—

- (a) any provision of the Offences against the State Acts 1939 to 1998, and
- (b) any provision of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993, other than the amendments made by section 13(2) of that Act to the Postal and Telecommunications Services Act 1983;

“place” includes a dwelling.

Search of Garda Síochána station.

**99.**—(1) Subject to this section, a designated officer directed by the Ombudsman Commission to investigate a complaint under *section 98* may carry out a search of a Garda Síochána station in accordance with an authorisation issued in the prescribed form by the Commission.

(2) Subject to *subsection (3)*, the Ombudsman Commission may issue to a designated officer an authorisation to search a Garda Síochána station, if the Commission is satisfied that the officer—

- (a) with reasonable cause, suspects the member under investigation to be guilty of an offence, and
- (b) has reasonable grounds for suspecting that evidence of, or relating to, the commission of the offence is to be found in the station or in the possession of any person to be found there.

(3) Before issuing an authorisation to search a Garda Síochána station designated by regulation under *section 126* as one that, for reasons relating to the security of the State, may not be searched except to the extent specified in a direction of the Minister, the Ombudsman Commission shall notify the Garda Commissioner and the Minister of its intention to issue the authorisation.

(4) If, on being informed of the intention to issue the authorisation, the Garda Commissioner informs the Ombudsman Commission that he or she objects to the search of the designated Garda Síochána station on grounds relating to the security of the State, the Garda Commissioner shall immediately request the Minister to consider the objection.

(5) If satisfied, after considering the objection and any submission made by the Ombudsman Commission concerning the objection, that the search of a document storage facility in the designated Garda Síochána station or of a part of that station would not be prejudicial to the security of the State or that such search is necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care

or custody of the Garda Síochána, the Minister shall issue directions specifying the part of the document storage facility or the part of the station that may be searched.

(6) A direction under *subsection (5)* may contain any conditions or restrictions relating to the search that the Minister considers necessary in the interests of the security of the State.

(7) Subject to any directions under *subsection (5)*, an authorisation issued under this section permits a designated officer, accompanied by any other designated officer, to—

- (a) enter, within one week after the date specified on the authorisation, the Garda Síochána station specified on the authorisation,
- (b) search that station and any persons found there, and
- (c) seize anything found in that station, or found in the possession of a person present in the station at the time of the search, that the designated officer reasonably believes to be evidence of, or relating to, the commission of the offence in question.

(8) A designated officer acting under an authorisation issued under this section may—

- (a) require any person present at the Garda Síochána station where the search is carried out to give to the officer his or her name and address, and
- (b) arrest without warrant any person who—
  - (i) obstructs or attempts to obstruct the officer, or any other designated officer accompanying the officer, in carrying out his or her duties,
  - (ii) fails to comply with a requirement under *paragraph (a)*, or
  - (iii) gives a name or address that the officer has reasonable cause for believing is false or misleading.

(9) A person who—

- (a) obstructs or attempts to obstruct a designated officer acting under an authorisation issued under this section,
- (b) fails to comply with a requirement under *subsection (8)(a)*, or
- (c) gives a false name or address to that officer,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a period not exceeding 6 months or both.

(10) In this section—

“commission”, in relation to an offence, includes an attempt to commit the offence;

“document storage facility” means any place or thing or part of a place in which documents are held or stored manually, mechanically or electronically;

“Garda Síochána station” means any premises where a member of the Garda Síochána is stationed.

Designated judge to oversee operation of certain provisions.

**100.**—(1) After consulting with the Minister, the President of the High Court shall invite a judge of the Court to undertake (while serving as a judge) the functions specified in *subsection (3)*, and, if the invitation is accepted, the Government shall designate the judge for the purpose of performing those functions.

(2) The designated judge holds office in accordance with the terms of his or her designation.

(3) The functions of the designated judge are—

(a) to keep under review the operation of *sections 96(4) to (6) and 99(3) to (5)* of this Act and of any regulations under *section 126*, and

(b) to report to the Taoiseach from time to time concerning any matters relating to the operation of those sections or regulations that the judge considers should be reported.

(4) For the purpose of performing his or her functions, the designated judge—

(a) may investigate any case in which a direction is issued by the Minister under *section 96* or *99*,

(b) is entitled to access to and may inspect any documents relating to that direction and any notification by the Garda Commissioner requesting the direction, and

(c) is entitled to access to any Garda Síochána station designated by regulation under *section 126*, as a place in which documents relating to the security of the State are stored and may inspect any document storage facility or documents in the station.

(5) Any person who was concerned in, or has information relevant to—

(a) a matter referred to the Minister under *section 96(5)*,

(b) an objection under *section 99(4)* to the search of a Garda Síochána station on grounds relating to the security of the State,

(c) a direction of the Minister concerning a matter referred to in *paragraph (a)* or an objection referred to in *paragraph (b)*,

shall, at the request of the designated judge, give him or her any information that the person has relating to that matter, objection or direction.

(6) The Taoiseach shall ensure that a copy of a report under *subsection (3)* is laid before each House of the Oireachtas together with

a statement of whether any matter has been excluded under *subsection (7)* from the report.

(7) If the Taoiseach considers, after consulting with the designated judge, that the publication of any matter in a report copies of which are to be laid before the Houses of the Oireachtas under *subsection (6)* would be prejudicial to the security of the State, the Taoiseach may exclude the matter from those copies.

**101.**—(1) On completing an investigation under *section 98*, the designated officer concerned shall report in writing to the Ombudsman Commission the results of the investigation. Report following investigation under *section 98*.

(2) If the Ombudsman Commission, after considering the designated officer's report, is of the opinion that the conduct under investigation may constitute an offence by the member of the Garda Síochána concerned, it shall—

- (a) send a copy of the report and of the investigation file to the Director of Public Prosecutions together with any recommendations that appear to the Commission to be appropriate, and
- (b) at the Director's request, provide him or her with any other information relating to the investigation that appears to the Director to be necessary for performing his or her functions under the Prosecution of Offences Act 1974.

(3) The Director of Public Prosecutions shall inform the Ombudsman Commission of—

- (a) a decision of the Director about whether or not to institute a prosecution in relation to the conduct that is the subject of a report received from the Commission under *subsection (2)*, and
- (b) if a prosecution is instituted, the progress of the prosecution and whether it results in the conviction or acquittal of the member of the Garda Síochána whose conduct was the subject of the report.

(4) *Subsection (2)* is not to be taken to limit the power of the Ombudsman Commission to forward to the Director of Public Prosecutions at any time a report on a complaint that, in its opinion, discloses the commission of an offence.

(5) If a member of the Garda Síochána is convicted of an offence in respect of a matter reported to the Director of Public Prosecutions under this section or if the Director decides not to institute a prosecution in relation to that matter, the Ombudsman Commission is not precluded from conducting or continuing an investigation into the matter under *section 95* by reason only that the conduct under investigation is in substance the same as the conduct constituting the offence of which the member is convicted or in respect of which no prosecution is instituted.

(6) If, after considering the designated officer's report, the Ombudsman Commission is not of the opinion referred to in *subsection (2)* but it considers that the complaint warrants investigation under *section 94* or *95*, it may proceed in accordance with either of those sections as appropriate.

(7) If, after considering the designated officer's report, the Ombudsman Commission is of the opinion that it discloses no misbehaviour by the member of the Garda Síochána concerned, the Commission shall take no further action in relation to the complaint.

Other investigations  
by Ombudsman  
Commission.

**102.**—(1) The Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.

(2) The Ombudsman Commission shall ensure that the following matters are investigated:

- (a) any matter referred to the Commission under *subsection (1)*;
- (b) any matter that appears to the Commission to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.

(3) The provisions of this Part relating to investigations and reports apply with the necessary modifications in relation to a matter referred to in *subsection (2)* of this section as if the matter were the subject of a complaint referred to in *section 91*.

(4) The Ombudsman Commission may, if it appears to it desirable in the public interest to do so and without receiving a complaint, investigate any matter that appears to it to indicate that a member of the Garda Síochána may have—

- (a) committed an offence, or
- (b) behaved in a manner that would justify disciplinary proceedings.

(5) The Minister may, if he or she considers it desirable in the public interest to do so, request the Ombudsman Commission to investigate any matter that appears to the Minister to indicate that a member of the Garda Síochána may have done anything referred to in *subsection (4)*, and the Commission shall investigate the matter.

(6) The provisions of this Part relating to investigations and reports apply with the necessary modifications in relation to a matter referred to in *subsection (4)* or *(5)* of this section as though that matter were the subject of a complaint other than one referred to in *section 91*.

Duty to keep  
certain persons  
informed.

**103.**—(1) The Ombudsman Commission shall provide the following persons with sufficient information to keep them informed of the progress and results of an investigation under this Part:

- (a) if the investigation resulted from a complaint—
  - (i) the complainant,
  - (ii) the member of the Garda Síochána whose conduct is the subject matter of the complaint,
  - (iii) the Garda Commissioner, and



(iv) any other person that the Commission considers has a sufficient interest in the matter;

(b) if the investigation is one to which *section 102* applies—

(i) the member of the Garda Síochána whose conduct is the subject matter of the investigation,

(ii) the Garda Commissioner,

(iii) the Minister, and

(iv) any other person that the Commission considers has a sufficient interest in the matter.

(2) The duties imposed by *subsection (1)* do not extend to requiring the Ombudsman Commission to provide information the disclosure of which would, in its opinion—

(a) prejudice a criminal investigation or prosecution,

(b) jeopardise a person's safety, or

(c) for any other reason not be in the public interest.

**104.**—Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, summary proceedings in respect of a matter relating to an offence reported to the Director of Public Prosecutions under this Act may be instituted within 12 months from the date of the offence.

Extension of time limit for instituting summary proceedings for offences.

**105.**—(1) Nothing in this Act precludes a member of the Garda Síochána from charging another member with an offence, even though the conduct to which the offence relates could be the subject matter of a complaint or investigation under this Part.

Same conduct may form basis for complaint or charge.

(2) However, if a complaint has been made concerning the conduct of a member of the Garda Síochána, the member may not be charged with an offence relating to that conduct except by or with the consent of the Director of Public Prosecutions.

**106.**—(1) For the purpose of preventing complaints arising in relation to a practice, policy or procedure of the Garda Síochána or of reducing the incidence of such complaints, the Minister may request the Ombudsman Commission to—

Examination of certain practices, policies and procedures of Garda Síochána.

(a) examine the practice, policy or procedure,

(b) report to the Minister within such period as he or she may specify on the results of the examination, and

(c) include in the report the Commission's recommendations for achieving that purpose.

(2) The Minister may make a request under *subsection (1)* on his or her own initiative or following a recommendation by the Ombudsman Commission that the practice, policy or procedure be examined.

(3) On making a request under this section, the Minister shall inform the Garda Commissioner in writing of the nature of the request, including—

- (a) the specific practice, policy or procedure to be examined, and
- (b) the reasons for requesting the examination.

(4) The Ombudsman Commission shall—

- (a) examine the practice, policy or procedure and make the report in accordance with the Minister's request, and
- (b) provide the Garda Commissioner with a copy of the report.

(5) The Minister may publish all or part of any report received under this section from the Ombudsman Commission.

Duties and powers relating to examination of practices, policies and procedures.

**107.**—(1) The Garda Commissioner shall supply the Ombudsman Commission with such information and documents as the Commission may require for the purpose of, or in connection with, an examination under *section 106*.

(2) The duty to supply information and documents under *subsection (1)* does not apply to any information or document, or a class of information or document, in respect of which the Garda Commissioner determines with the Minister's consent that its disclosure would—

- (a) prejudice a criminal investigation or prosecution,
- (b) prejudice the security of the State, or
- (c) jeopardise the safety of a person.

Protocols.

**108.**—As soon as practicable after the commencement of this section, the Ombudsman Commission and the Garda Commissioner shall, by written protocols, make arrangements concerning the following matters:

- (a) the use of detention facilities at Garda Síochána stations by designated officers of the Ombudsman Commission for the purpose of exercising their powers and carrying out their duties under *section 98*;
- (b) the application of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Stations) Regulations 1987 (S.I. No. 119 of 1987) when those detention facilities are used by designated officers for the purpose referred to in *paragraph (a)*;
- (c) the handling of any investigations by the Ombudsman Commission under this Act that coincide with investigations by the Garda Síochána into the same matters;
- (d) the sharing with each other of information (including evidence of offences) obtained by either the Ombudsman Commission or the Garda Commissioner.

**109.**—(1) After consulting with the Ombudsman Commission, the Minister may request the Chief Justice to invite a judge to inquire (while serving as a judge) into the conduct of a designated officer in performing functions under *section 98* or *99* in relation to any investigation under this Part.

Judicial inquiry into conduct of designated officers of Ombudsman Commission.

(2) Either a judge of the Supreme Court or, with the consent of the President of the High Court, a judge of the High Court may be invited, and, if the invitation is accepted, shall be appointed, by the Chief Justice to conduct the inquiry.

(3) The appointed judge's terms of reference shall be specified in the request and may relate to the designated officer's conduct either on a particular occasion or in general in performing functions under *section 98* or *99*.

(4) The appointed judge may conduct the inquiry in the manner he or she thinks proper, whether by examining witnesses or otherwise, and may, in particular, conduct any proceedings relating to the inquiry otherwise than in public.

(5) For the purpose of the inquiry, the appointed judge has the powers, rights and privileges vested in a judge of the High Court on the hearing of an action, including the power to—

(a) enforce the attendance of witnesses, and

(b) compel the production of records.

(6) On completing the inquiry, the appointed judge shall report its results to the Minister who shall forward a copy of the report to the Ombudsman Commission for such action as it considers appropriate in the circumstances.

**110.**—(1) A person who, in relation to a complaint or investigation under this Part, provides to the Ombudsman Commission information that the person knows to be false or misleading is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

Offence of providing false or misleading information.

(2) A prosecution for an offence under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions on the referral of the matter to the Director by the Ombudsman Commission.

**111.**—(1) In this section “former Act” means the Garda Síochána (Complaints) Act 1986.

Transitional provision relating to complaints under Garda Síochána (Complaints) Act 1986.

(2) Where an investigation under section 6 of the former Act of a complaint made under that Act has not commenced before the repeal of that section pursuant to this Act, the complaint is deemed to have been made under this Act.

(3) Where an investigation under section 6 of the former Act into a complaint made under that Act has commenced before the repeal of that section pursuant to this Act but all matters relating to the complaint have not been completed before the repeal, the former Act continues to apply in relation to the complaint as though no provision of that Act had been repealed.

(4) For the purpose of this section, an investigation under section 6 of the former Act commences when a member of the Garda Síochána is appointed under that section to investigate a complaint made under that Act.

Qualified privilege for certain statements and publications.

**112.**—(1) A statement made in any form and without malice at a meeting or hearing of the Ombudsman Commission by any of its members or officers is privileged for the purposes of the law of defamation, and so is any subsequent publication of the statement made without malice.

(2) Where the statements in a document of, or in a report by, the Ombudsman Commission or any of its members or officers are made without malice, the subsequent publication of the document or report is privileged for purposes of the law of defamation.

(3) For the purposes of this section, a statement made by, or a document or report of, a person to whom a function is delegated under *section 75* is deemed to be—

- (a) a statement made by a member of the Ombudsman Commission, or
- (b) a document of, or a report made by, the Commission,

if the statement, document or report, as the case may be, is connected with the performance of the delegated function.

## PART 5

### ESTABLISHMENT AND FUNCTIONS OF GARDA SÍOCHÁNA INSPECTORATE

Establishment day.

**113.**—(1) The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Part.

(2) An order under this section shall be laid before each House of the Oireachtas.

Establishment of Garda Síochána Inspectorate.

**114.**—On the establishment day, a body to be known as Cigireacht an Garda Síochána or, in the English language, the Garda Síochána Inspectorate stands established to perform the functions assigned to it by this Act.

Membership of Inspectorate.

**115.**—(1) The Garda Síochána Inspectorate shall consist of 3 members, to be appointed by the Government.

(2) One of the members shall be appointed as Chief Inspector.

(3) At least one of the members shall be a woman and at least one of them shall be a man.

(4) A person shall not be appointed as a member unless it appears to the Government that the person is suitable for the appointment by reason of—

- (a) his or her service as a senior officer or retired such officer in the police service of another state, or

- (b) having otherwise obtained such relevant experience, qualifications, training or expertise as, in the opinion of the Government, is or are appropriate having regard, in particular, to the functions of the Inspectorate.

(5) A person is not eligible to be appointed under this section if he or she is or has been a member of the Garda Síochána.

(6) The first appointment of persons to be members of the Inspectorate becomes effective on the establishment day.

**116.**—(1) A member of the Garda Síochána Inspectorate holds office for the period determined by the Government at the time of appointment. Terms and conditions of office.

(2) A member is eligible for reappointment.

(3) A member holds office on the terms and conditions relating to remuneration (including allowances for expenses, benefits in kind and superannuation) or other matters that may be determined by the Minister, with the consent of the Minister for Finance, at the time of appointment or reappointment.

(4) A member may at any time resign his or her office by letter addressed to the Minister, and the resignation takes effect on the date of receipt of the letter.

(5) A member may be removed from office by the Government for stated misbehaviour or if, in its opinion, the member has become incapable through ill-health of effectively performing the duties of the office.

(6) Whenever a vacancy occurs in the membership of the Inspectorate caused by the resignation, removal from office or death of a member, the vacancy is to be filled by appointment in accordance with *section 115*.

(7) A member who is appointed to fill any such vacancy holds office for the remainder of the term of office of the replaced member.

(8) The Inspectorate may act notwithstanding any such vacancy or any resulting non-compliance with *section 115(3)*.

**117.**—(1) The objective of the Garda Síochána Inspectorate is to ensure that the resources available to the Garda Síochána are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services. Objective and functions.

(2) The functions of the Inspectorate are—

(a) in furtherance of its objective to carry out, at the request or with the consent of the Minister, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána,

(b) to submit to the Minister—

(i) a report on those inspections or inquiries, and

- (ii) if required by the Minister, a report on the operation and administration of the Garda Síochána during a specified period and on any significant developments in that regard during that period,

and

- (c) to provide advice to the Minister with regard to best policing practice.

(3) Any report prepared under *subsection (2)(b)* shall, where appropriate, contain recommendations for any action that the Inspectorate considers necessary.

(4) Subject to *subsection (5)*, the Minister shall cause copies of any reports received by him or her under *subsection (2)(b)* to be laid before the Houses of the Oireachtas.

(5) The Minister may exclude from the copies of reports which are to be laid before the Houses of the Oireachtas any matter which, in his or her opinion—

- (a) would be prejudicial to the interests of national security, or
- (b) might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person.

(6) The Inspectorate, with the approval of the Minister, may arrange—

- (a) with any police service outside the State for the engagement of police officers from that service, or
- (b) with any other body for the engagement of other persons, for the provision of consultancy or advisory services in connection with the performance of its functions.

(7) Subject to this Act, the Inspectorate shall be independent in the performance of its functions.

Co-operation with  
Inspectorate.

**118.—(1)** As soon as practicable after the commencement of this section the Inspectorate and the Garda Commissioner shall by written protocols, make arrangements to ensure that the Inspectorate receives any information requested by it which is in the possession of the Garda Síochána and which, in the opinion of the Inspectorate, is necessary for the performance of its functions.

(2) Nothing in any other enactment prohibits disclosure of relevant factual information either to or by the Inspectorate.

(3) The Inspectorate, members of its staff, or any persons providing consultancy or other services to it shall not disclose, in or outside the State, other than in accordance with this Act, any information obtained by it or by such members or persons.

(4) A person who contravenes *subsection (3)* is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(5) *Subsection (3)* is in addition to, and not in substitution for, the relevant provisions of the Official Secrets Act 1963.

**119.**—(1) Such funds, premises, facilities, services and staff as may be necessary for the proper functioning of the Garda Síochána Inspectorate shall be provided to it by the Minister with the consent of the Minister for Finance. Provision of services to Inspectorate.

(2) The Minister may appoint such and so many persons to be members of the staff of the Inspectorate as he or she considers necessary to assist the Inspectorate in the performance of its functions.

(3) Such persons shall be appointed on such terms and subject to such conditions and shall receive such remuneration as the Minister may, with the consent of the Minister for Finance, determine.

**120.**—(1) The Chief Inspector shall, at the written request of a committee of either or both of the Houses of the Oireachtas (other than the Committee of Public Accounts) in connection with the subject matter of any report of which copies were laid before those Houses under *section 117(4)*, attend before it in relation to any aspect of that matter. Accountability to Oireachtas committees.

(2) In carrying out his or her duties under this section, the Chief Inspector shall not—

- (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits or objectives of such policy, or
- (b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person.

## PART 6

### REGULATIONS AND MISCELLANEOUS PROVISIONS

**121.**—(1) The Minister may, with the approval of the Government— General power to make regulations.

- (a) by regulation provide for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) in addition to any other power conferred on him or her to make regulations, make regulations generally for the purposes of and for the purposes of giving full effect to this Act.

(2) Before making regulations under this section, the Minister shall consult with any or all of the following as the Minister considers appropriate:

- (a) the Garda Commissioner;

- (b) the Ombudsman Commission;
- (c) the Garda Síochána Inspectorate.

(3) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

Regulations relating to management of Garda Síochána.

**122.**—(1) The Minister may, after consulting with the Garda Commissioner and with the approval of the Government, make regulations for the management of the Garda Síochána, including regulations relating to any or all of the following matters:

- (a) the different ranks into which the members of the Garda Síochána are to be divided;
- (b) the minimum and maximum number of members in each rank;
- (c) the duties of the different ranks in the Garda Síochána;
- (d) the admission, appointment and enrolment of members, including members who have served with other police services and members with different ethnic or national origins or different religious beliefs or backgrounds;
- (e) the appointment to the Garda Síochána of members on secondment from any other police service;
- (f) the training of members;
- (g) the pay and allowances of members, including the conditions under which they are payable;
- (h) the retirement of members;
- (i) the payment of pensions, allowances and gratuities to members and their spouses, children and dependents, including—
  - (i) the conditions under which those pensions, allowances and gratuities are payable,
  - (ii) the rates and scales of payment, and
  - (iii) the penalties for fraudulent conduct in relation to an application for a pension, allowance or gratuity;
- (j) the promotion of members;
- (k) requirements relating to the resignation of members;
- (l) the use of facilities, equipment, arms or services by the Garda Síochána;
- (m) the formation of associations referred to in *section 18* and matters relating to the role, status and carrying out of business within the Garda Síochána of those associations;
- (n) the limitations, restrictions or conditions applicable to the exercise of the Garda Commissioner's powers under *section 29*;



- (o) the circumstances in which and the extent to which police services referred to in *section 30(3)* may be provided by the Garda Síochána;
- (p) the costs to be taken into account under *section 30(4)* in relation to the provision of police services;
- (q) the limitations, restrictions or conditions applicable to the delegation of the Garda Commissioner's functions under *section 31*;
- (r) any other matter relating to the organisation, training, carrying out of duties, efficiency, management or administration of the Garda Síochána.

(2) A person is not eligible for appointment as a member of a panel referred to in *subsection (3)* if the person is or has been a member of the Garda Síochána.

(3) Regulations under *subsection (1)(j)* shall include provision for the establishment of promotion boards comprising 3 members—

- (a) one of whom shall be a member of the Garda Síochána appointed by the Garda Commissioner as a member of the board, and
- (b) 2 of whom (including the chairperson of the board) shall be appointed by the Minister from a panel established in accordance with the regulations and consisting of suitably qualified persons appointed to the panel by the Government.

(4) In making regulations, the Minister shall consider the objective of promoting effectiveness, efficiency and economy in the Garda Síochána.

(5) A regulation under this section may—

- (a) apply generally to all ranks and grades in the Garda Síochána and to reserve members,
- (b) apply only to—
  - (i) specified ranks and grades in the Garda Síochána,
  - (ii) members on secondment to an international organisation under *section 51(2)(b)*,
  - (iii) members appointed to the Garda Síochána under *section 53* on secondment from the Police Service of Northern Ireland,
  - (iv) members on secondment to the Police Service of Northern Ireland under *section 54*,
  - (v) members appointed to the Garda Síochána on secondment from any other police service, or
  - (vi) reserve members,
- (c) make different provision for different ranks or grades in the Garda Síochána or for different categories of members mentioned in *paragraph (b)(ii) to (v)*, and

(d) authorise any matter or thing to be determined or applied by a specified person or body.

(6) Before making regulations under *subsection (1)(g) or (i)*, the Minister shall—

(a) submit a draft of the regulations to the associations referred to in *section 18* representing the ranks and grades in the Garda Síochána who would be affected by the regulations, and

(b) consider any representations made to him or her in respect of the draft regulations by any of those associations.

Disciplinary regulations.

**123.**—(1) The Minister may, after consulting with the Garda Commissioner and with the approval of the Government, make regulations concerning the maintenance of discipline in the Garda Síochána, including, but not limited to, regulations relating to the matters provided for in *subsections (2) to (5)*.

(2) The regulations may specify the acts or omissions that may be the subject of disciplinary action under the regulations, including—

(a) the matters specified in *Schedule 5*,

(b) failure to comply with specified provisions of the Code of Ethics established under *section 17*,

(c) failure to co-operate with an investigation under the law and procedures referred to in *section 55(2)(a)*,

(d) any matter constituting a breach of discipline as defined in *section 55(6)*,

(e) failure to co-operate with an investigation conducted under this Act or the regulations or with a board established under the regulations to make determinations in relation to discipline,

(f) any abuse of procedure by a member of the Garda Síochána with respect to a search under *section 99* of a document storage facility in a designated Garda Síochána station, and

(g) matters relating to work performance.

(3) The regulations may also provide for the procedures to be followed if—

(a) it appears or is alleged that an act has been done or omission made that may be the subject of disciplinary action,

(b) a complaint is referred to the Garda Commissioner under *section 92(a)*, or

(c) the Ombudsman Commission, in a report under *section 94(7) or 95(4)*, makes a recommendation referred to in *section 97(1)(b)*.

(4) Regulations relating to the procedures to be followed in the circumstances referred to in *subsection (3)* may include provision for—

- (a) an investigation, the manner in which the investigation is to be conducted and the appointment of a member of the Garda Síochána to conduct the investigation,
  - (b) the making of recommendations or reports following an investigation, the persons to whom the recommendations or reports are to be made and the action to be taken as a result of the reports,
  - (c) hearings by a board to determine whether or not the act or omission referred to in *subsection (3)(a)* was done or made,
  - (d) the taking of disciplinary action and the circumstances in which a decision concerning that action may be taken by a board, the Garda Commissioner or the Government, and
  - (e) an appeal from a determination referred to in *paragraph (c)* or from a decision of a board or the Garda Commissioner relating to disciplinary action and for the time limits and other restrictions or conditions subject to which the right of appeal may be exercised.
- (5) The regulations may also—
- (a) provide for the establishment of a board referred to in *subsection (4)(c)*, for the appointment of its members and for the conduct of its business,
  - (b) specify the powers of a board,
  - (c) specify the persons who are entitled to attend hearings before a board,
  - (d) empower a board to require persons to attend before it,
  - (e) empower a board to require persons to give evidence or produce documents to it,
  - (f) enable a board to administer oaths or take affirmations,
  - (g) provide for the admissibility of evidence,
  - (h) specify any matters that a board is to have regard to in making a determination, including in appropriate cases, a report by the Ombudsman Commission under *section 94(7)* or *95(4)*,
  - (i) empower a board to make a determination or decision in relation to a member of the Garda Síochána notwithstanding his or her absence from a hearing, if, after being notified of it, the member fails without proper cause to attend the hearing,
  - (j) provide for the establishment of a body to hear appeals referred to in *subsection (4)(e)* and for the appointment of its members,
  - (k) specify the powers of the appeal body, and

(l) provide for privilege under the law of defamation in relation to reports published by or statements made by a board or the appeal body under the regulations.

(6) The regulations may—

(a) make different provision under *subsection (3) or (4)* for different categories of acts or omissions referred to in *subsection (2)* based on whether the acts or omissions were the subject of a report by the Ombudsman Commission or based on any other factor, and

(b) provide for the taking of different forms of disciplinary action against members of the Garda Síochána based on their rank or on any other factor.

(7) A person who—

(a) without reasonable excuse, does not comply with a requirement imposed under the regulations by a board to attend before it or to give evidence or produce documents to it, or

(b) gives to a board evidence that he or she knows to be false or misleading,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 6 months or both.

(8) In this section—

“board” means a board established by regulation under *subsection (5)(a)*;

“disciplinary action” means—

(a) dismissal,

(b) requirement to retire or resign as an alternative to dismissal,

(c) reduction in rank,

(d) reduction in pay not exceeding 4 weeks’ pay,

(e) reprimand,

(f) warning,

(g) caution, or

(h) advice.

Regulations relating to reporting corruption and malpractice in the Garda Síochána.

**124.**—(1) The Minister shall, after consulting with the Garda Commissioner, the Ombudsman Commission and the Inspectorate, and with the approval of the Government, make regulations providing for the establishment of a charter containing guidelines and mechanisms to enable members of the Garda Síochána or other persons to report in confidence allegations of corruption and malpractice within the Garda Síochána.

(2) The Minister shall cause a copy of every regulation made under this section to be laid before each House of the Oireachtas as soon as practicable after the regulation is made.

**125.**—(1) The Minister may, after consulting with the Garda Commissioner and with the approval of the Government, make regulations—

Regulations relating to police co-operation under sections 52 to 56.

- (a) specifying the ranks that members of the Police Service of Northern Ireland must hold to be eligible for appointment under *section 52* or *53* to specified ranks in the Garda Síochána and any experience that may be necessary or desirable for that appointment,
- (b) providing for procedural matters relating to—
  - (i) appointments under *sections 52* and *53* to ranks in the Garda Síochána, including, in relation to appointments under *section 52*, the conduct of competitions for vacancies in the ranks concerned, or
  - (ii) secondments to the Police Service of Northern Ireland under *section 54*.

(2) The Minister shall ensure that every regulation made under this section is laid before each House of the Oireachtas as soon as practicable after it is made.

(3) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the regulation is laid before it, annul the regulation.

(4) The annulment of a regulation under *subsection (3)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the regulation before the passing of the resolution.

(5) The power to make regulations under this section is additional to the power to make regulations under *sections 122* and *123* and is not to be taken to limit the power to make regulations under those sections in relation to members referred to in *section 122(5)(b)(iii)* or *(iv)*.

**126.**—(1) The Minister may, after consulting with the Garda Commissioner and with the approval of the Government, make regulations—

Regulations relating to matters concerning security of State.

- (a) designating, for the purpose of *section 96*, information, documents or things or classes of information, documents or things that—
  - (i) relate to the security of the State, and
  - (ii) are not subject to disclosure under that section except in accordance with a direction of the Minister,
 and
- (b) designating, for the purpose of *section 99*, Garda Síochána stations—

- (i) in which information, documents or things, or classes of information, documents or things, relating to the security of the State are held, and
- (ii) that are not subject to search under that section except to the extent specified in a direction of the Minister.

(2) On making a regulation under this section or amending or revoking the regulation, the Minister shall provide the Ombudsman Commission and the judge designated under *section 100* with a copy of the regulation, the amendment or the instrument revoking the regulation.

Reward Fund and related regulations.

**127.**—(1) The Garda Síochána Reward Fund established under section 18 of the Garda Síochána Act 1924 for the reward and benefit of members continues in being under this Act.

(2) The Minister may, with the concurrence of the Minister for Finance, make regulations prescribing—

- (a) the manner in which the Garda Síochána Reward Fund is to be administered, and
- (b) the sums that are to be paid into that Fund.

Continuation of certain regulations and orders.

**128.**—(1) The regulations and orders made or continued under an enactment repealed by *section 4* continue in force until they are revoked by the Minister under this section or others are made in their place under this Part.

(2) The Minister may, with the approval of the Government, amend or revoke an order or regulation continued in force under this section.

(3) Any proceedings relating to a member of the Garda Síochána that were commenced but are not concluded under the 1989 Regulations before their revocation pursuant to *subsection (2)* may be continued under those Regulations as though no provision of them had been revoked.

(4) If in relation to proceedings that by virtue of this section are continued under the 1989 Regulations a decision is made by an inquiry held under Regulation 14 or by the Garda Commissioner under Regulation 23(1), the member concerned is entitled to apply in accordance with Regulation 26 to have the decision reviewed by an Appeal Board appointed under Regulation 25 and in that case the provisions of the 1989 Regulations relating to the hearing and determination by an Appeal Board of the application apply.

Certificate evidence.

**129.**—(1) In any legal proceedings, a certificate signed by a member of the Ombudsman Commission and stating that the person named in the certificate was a designated officer of the Commission for a specified purpose during a specified period is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

(2) In any legal proceedings, a certificate signed by a member of the Ombudsman Commission and stating that a specified function of the Commission was on a specified date delegated by it in accordance

with *section 75* to a specified person and specifying the restrictions or conditions, if any, imposed on the delegation is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

(3) A certificate referred to in *subsection (1)* or *(2)* that purports to be signed by a member of the Ombudsman Commission is admissible in evidence in any legal proceedings without proof of the member's signature.

**130.**—In legal proceedings, a person purporting to be a member of the Garda Síochána of any rank is, in the absence of evidence to the contrary, presumed to be a member of that rank.

Proof of membership or rank in Garda Síochána.

**131.**—(1) The Minister may, by order, designate as an authorised body for the purposes of this section any of the following:

Exercise of special powers by security officers.

- (a) the Courts Service;
- (b) a Department of State;
- (c) the Office of the Attorney General;
- (d) the Houses of the Oireachtas Commission;
- (e) the National Gallery of Ireland;
- (f) the Board of the National Museum of Ireland.

(2) For the purposes of this section, the head of an authorised body may, in writing—

- (a) specify any premises in which any activity relating to the functions of that body is carried out, and
- (b) designate a person as a security officer in relation to those premises if satisfied that—
  - (i) the person is a suitable person to exercise the powers of a security officer under this section in relation to specified premises,
  - (ii) the person has received adequate training for that purpose, and
  - (iii) where the person is an employee of a person with whom the authorised body or its head has entered into a contract for the provision of security services (“the contractor”), the contractor is a fit and proper person to supervise the person's exercise of those powers.

(3) A security officer may, in carrying out his or her duties in relation to specified premises, exercise any of the powers set out in *subsection (4)* or, if applicable, *subsection (5)*, but only if—

- (a) the security officer is identifiable as such by means of a badge or uniform, and

- (b) the powers are exercised in accordance with any general or special instruction of the person by whom the security officer is designated.

(4) Subject to *subsection (7)*, a security officer has the following powers:

- (a) to search any person who is in or seeks entry to the specified premises in relation to which the officer is designated;
- (b) to examine any article that is in or is being delivered to or brought into those premises;
- (c) to exclude or remove from the premises any person who, without good cause—
  - (i) refuses to be searched, or
  - (ii) refuses to allow an article in his or her possession to be examined;
- (d) to exclude or remove any person from the premises if it is necessary to do so—
  - (i) to protect a person or any property, or
  - (ii) to allow the business of the authorised body to proceed without interference or delay;
- (e) to require any person who is in or seeks entry to the premises to identify himself or herself;
- (f) to seize, in exercising powers under this section, any weapon other than one in the possession of a person with lawful authority;
- (g) to seize any article that the officer has reason to believe is being unlawfully removed from the premises;
- (h) to use reasonable force where necessary in exercising a power conferred under *paragraph (c), (d), (f) or (g)*.

(5) In addition, a security officer designated under *subsection (2)* by the Chief Executive of the Courts Service may, in carrying out the officer's duties in relation to specified premises all or part of which is a court, at the oral direction of a judge—

- (a) remove from the court any person who commits contempt of court, or
- (b) take into custody any person who commits contempt of court and deliver that person into the custody of a member of the Garda Síochána as soon as practicable.

(6) Unless the court has ordered by warrant or otherwise that a person taken into custody under *subsection (5)(b)* be committed to prison or be released, that person shall, before the court rises, be brought by—

- (a) the security officer concerned, if still in his or her custody, or



- (b) a member of the Garda Síochána, if already delivered into the custody of the Garda Síochána,

before the court for it to deal with the matter.

(7) A security officer may use reasonable force where necessary in complying with a direction under *subsection (5)* or carrying out a duty under *subsection (6)*.

(8) The powers conferred on security officers under this section do not authorise a security officer to—

- (a) require a person to remove clothing other than outer garments, such as coats, hats, jackets and shoes, or
- (b) read any document that would be exempt from production in any proceedings in a court on the ground of legal professional privilege.

(9) Nothing in this section affects any power of arrest conferred by law, including the power conferred under section 4 of the Criminal Law Act 1997.

(10) In this section—

“authorised body” means a body that for the time being is designated by the Minister under *subsection (1)*;

“head of an authorised body” means—

- (a) in relation to a Department of State, the Minister of the Government having charge of the Department,
- (b) in relation to the Office of the Attorney General, the Attorney General, and
- (c) in relation to any other authorised body, the person who holds or performs the functions of the chief executive officer (by whatever name called) of that body;

“premises” includes—

- (a) any building or part of a building, and
- (b) any land ancillary to a building;

“security officer” means a person who for the time being is designated by the head of an authorised body under *subsection (2)* as a security officer for the purpose of guarding, patrolling or providing any other protective services in relation to specified premises and persons on those premises;

“specified premises” means premises specified in accordance with *subsection (2)* by the head of an authorised body.

**132.**—The Comptroller and Auditor General (Amendment) Act 1993 is amended by inserting the following section after section 18:

“Application of this Act to Garda Síochána.

18A.—This Act applies to the Garda Síochána as though it were a Department.”.

Amendment of Comptroller and Auditor General (Amendment) Act 1993.

Section 4.

## SCHEDULE 1

## REPEALS

(1) Number and Year	(2) Short Title of Act	(3) Extent of Repeal
No. 25 of 1924	Garda Síochána Act 1924	Sections 6, 10, 11, 12, 13, 14, 15, 18 and 23
No. 31 of 1924	Dublin Police Act 1924	Section 12
No. 7 of 1925	Police Forces Amalgamation Act 1925	Sections 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15(1), 18, 19, 20 and 21 and the First and Fourth Schedules
No. 32 of 1933	Garda Síochána (Pensions) Act 1933	All provisions
No. 2 of 1972	Garda Síochána Act 1972	All provisions
No. 24 of 1977	Garda Síochána Act 1977	All provisions
No. 29 of 1986	Garda Síochána (Complaints) Act 1986	All provisions
No. 1 of 1989	Garda Síochána Act 1989	All provisions
No. 19 of 2003	Garda Síochána (Police Co-operation) Act 2003	All provisions

## SCHEDULE 2

## TERMS AND CONDITIONS OF TRANSFERRED STAFF

Sections 19(7) and 72(3).

1. Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person who is transferred under *section 19(7)* to the staff of the Garda Síochána or under *section 72(3)* to become an officer of the Ombudsman Commission shall not, while in the service of the Garda Síochána or the Ombudsman Commission, as the case may be, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service than the scale of pay to which he or she was entitled and the terms and conditions of service to which he or she was subject immediately before the transfer of that person.
2. Until such time as the scale of pay and the terms and conditions of service of a person transferred under *section 19(7)* or *72(3)* are varied by the Garda Commissioner or the Ombudsman Commission, as the case may be, with the agreement of the Minister and the Minister for Finance, following consultation with any recognised trade union or staff association concerned, the scale of pay to which he or she was entitled and the terms and conditions of service, restrictions, requirements and obligations to which he or she was subject immediately before the transfer of that person shall continue to apply to him or her

and may be applied or imposed by the Garda Commissioner or the Ombudsman Commission, as the case may be, while he or she is a member of the staff of the Garda Commissioner or an officer of the Ombudsman Commission, as the case may be, and no such variation shall operate to worsen that scale of pay or those terms or conditions of service applicable to such person immediately before the transfer of that person, except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

### SCHEDULE 3

*Section 50.*

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE  
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND ON POLICE CO-OPERATION, DONE AT BELFAST ON  
29 APRIL 2002

The Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland:

Having regard to the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on 10 April 1998 (“the British-Irish Agreement”) and to the Multi-Party Agreement reached at Belfast on 10 April 1998 annexed to the aforesaid Agreement;

Having regard also to the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Dublin on 8 March 1999 establishing a British-Irish Intergovernmental Conference;

Considering the report of the Independent Commission on Policing for Northern Ireland published in September 1999 (“the Patten Report”);

Taking into account the progress made within the European Union on improving police co-operation pursuant to the provisions of Title VI of the Treaty on European Union;

Recalling the discussions that took place between the two Governments at Weston Park in July 2001, the measures announced on 1 August 2001 and the Updated Implementation Plan for the Patten Report published in August 2001;

Noting the establishment of the new Policing Board for Northern Ireland;

Have agreed as follows:

#### *Article 1*

##### Eligibility to apply for posts

- (1) (a) The Government of the United Kingdom of Great Britain and Northern Ireland shall introduce the necessary administrative and legislative measures to enable members of the Garda Síochána to apply for posts at ranks of above Inspector level in the Police Service of Northern Ireland.

- (b) When determining the eligibility of a member of the Garda Síochána to apply for such posts in the Police Service of Northern Ireland, appropriate recognition will be given to the rank, experience and qualifications that would be required for an equivalent rank in the Garda Síochána. An eligible applicant will be required to compete in a merit-based selection procedure with all other applicants.
- (2) (a) The Government of Ireland shall introduce the necessary administrative and legislative measures to enable members of the Police Service of Northern Ireland to apply for posts at ranks of above Inspector level in the Garda Síochána.
- (b) When determining the eligibility of a member of the Police Service of Northern Ireland to apply for a post in the Garda Síochána, appropriate recognition will be given to the rank, experience and qualifications that would be required for an equivalent rank in the Police Service of Northern Ireland. An eligible applicant will be required to compete in a merit-based selection procedure with all other applicants.

*Article 2*

Secondment with Policing Powers

- (1) (a) The Government of the United Kingdom of Great Britain and Northern Ireland shall introduce the necessary administrative and legislative measures to enable members of the Garda Síochána to be seconded to the Police Service of Northern Ireland for periods not exceeding three years.
- (b) For the duration of such secondments, the member in question shall have the same powers, duties, rights and obligations, including as appropriate the wearing of the uniform, as an attested member of the Police Service of Northern Ireland. For the duration of the secondment, the member shall not be subject to the direction and control of the Garda Commissioner and shall not exercise police powers within the jurisdiction of the Government of Ireland.
- (2) (a) The Government of Ireland shall introduce the necessary administrative and legislative measures to enable members of the Police Service of Northern Ireland to be seconded to the Garda Síochána for periods not exceeding three years.
- (b) For the duration of such secondments, the member in question shall have the same powers, duties, rights and obligations, including as appropriate the wearing of the uniform, as an attested member of the Garda Síochána. For the duration of the secondment, the member shall not be subject to the direction and control of the Chief Constable of the Police Service of Northern Ireland and shall not exercise police powers within Northern Ireland.

*Article 3*

Police Protocols

- (1) The Police Service of Northern Ireland and the Garda Síochána shall, as appropriate, draw up written Protocols between them addressing detailed aspects of co-operation between them,

including in particular the issues referred to in Articles 2, 3, 5, 6, 7, 8, 9 and 10 of this Agreement.

- (2) Such Protocols shall be signed by the Commissioner of the Garda Síochána and the Chief Constable of the Police Service of Northern Ireland or persons authorised to do so on their behalf. Copies of all such Protocols shall be forwarded to the Minister for Justice, Equality and Law Reform, the Secretary of State for Northern Ireland and the Northern Ireland Policing Board.
- (3) Such Protocols shall not constitute international agreements and shall not have binding effect on either Government.

#### *Article 4*

##### Annual Conference

An annual conference shall be convened between the Police Service of Northern Ireland and the Garda Síochána. It shall be hosted by each service on an alternating basis and the conference topics shall be decided by mutual arrangement between the two services. The costs of the conference shall be met by the host service and each service shall meet their own travel costs in attending the conference.

#### *Article 5*

##### Personnel Exchanges

- (1) A programme shall be introduced to facilitate members of the Police Service of Northern Ireland being placed in the Garda Síochána, and members of the Garda Síochána being placed in the Police Service of Northern Ireland for periods not exceeding one year.
- (2) The purpose of these placements will be to further enhance links and to transfer experience and expertise, including in the area of training.
- (3) Members of the Garda Síochána will, for the duration of their placement, report to and work with the Police Service of Northern Ireland. However the member placed will remain a full member of the Garda Síochána subject to the overall direction and control of the Garda Commissioner and shall not exercise any police powers in Northern Ireland.
- (4) Members of the Police Service of Northern Ireland will, for the duration of their placement, report to and work with the Garda Síochána. However the member placed will remain a full member of the Police Service of Northern Ireland subject to the overall direction and control of the Chief Constable and shall not exercise any police powers in the jurisdiction of the Government of Ireland.

#### *Article 6*

##### Liaison

- (1) Officers in both services shall be designated as liaison officers as considered appropriate to enhance co-operation between the Garda Síochána and the Police Service of Northern Ireland.

- (2) The Commissioner of the Garda Síochána and the Chief Constable of the Police Service of Northern Ireland shall, in consultation with the respective Governments, explore other methods of enhancing liaison including the possible exchange of liaison officers.

*Article 7*

Training

The Police Service of Northern Ireland and the Garda Síochána shall enhance structures for co-operation in the area of training.

*Article 8*

Disaster Planning

The Police Service of Northern Ireland and the Garda Síochána shall, in consultation with other authorities responsible for the emergency services in both jurisdictions, work together in promoting improved joint planning.

*Article 9*

Joint Investigations

- (1) The Police Service of Northern Ireland and the Garda Síochána shall, as appropriate, make full use of existing arrangements for facilitating joint investigations and additional arrangements that are put in place in the context of European Union developments.
- (2) An expert group shall be established by both Governments to review the existing arrangements and to make recommendations on legal and administrative measures that could be taken to facilitate further the operation of joint Police Service of Northern Ireland and Garda Síochána investigations.

*Article 10*

Communications

- (1) The Police Service of Northern Ireland and the Garda Síochána shall review communication links on an ongoing basis with a view to establishing and enhancing fast, effective and reliable communications.
- (2) The Police Service of Northern Ireland and the Garda Síochána shall, as appropriate, consult with one another in the context of the procurement and development of their communications and information technology systems, and shall take into account the desirability of achieving greater compatibility between their systems.

*Article 11*

Relationship with other international agreements

This Agreement shall not affect the rights and obligations of the Parties under other international agreements.

*Article 12*

## Entry into force

Each Government shall notify the other in writing of the completion, so far as it is concerned, of the requirements for entry into force of the Agreement. This Agreement shall enter into force on the date of the receipt of the later of the two notifications.

In witness whereof the undersigned, being duly authorised thereto by the respective Governments, have signed this Agreement.

Done in two originals at Belfast on the Twenty-ninth day of April 2002.

For the Government  
of Ireland:

JOHN  
O'DONOGHUE

For the Government of the  
United Kingdom of Great  
Britain and Northern Ireland:

JOHN REID

Section 65.

## SCHEDULE 4

APPOINTMENT TO OMBUDSMAN COMMISSION OF PERSON HOLDING  
JUDICIAL OFFICE**If Supreme Court judge or former Supreme Court judge is appointed member of Ombudsman Commission.**

1. (1) If a person appointed as the chairperson of the Ombudsman Commission is, when so appointed, an ordinary judge of the Supreme Court, then, for so long as he or she continues to hold that judicial office, the number of ordinary judges of the Supreme Court otherwise provided for under any enactment for the time being in force may be exceeded by one.
- (2) If the person so appointed is a former Chief Justice of the Supreme Court, the proviso to paragraph (a) (inserted by the Courts (No. 2) Act 1997) of section 14(1) of the Law Reform Commission Act 1975 applies to him or her in respect of his or her appointment as a member of the Ombudsman Commission to the like extent as it applies to a former Chief Justice who is appointed to be the President of the Law Reform Commission.

**If High Court judge or President or former President of High Court is appointed member of Ombudsman Commission.**

2. (1) If a person appointed as the chairperson of the Ombudsman Commission is the President of the High Court or an ordinary judge of the High Court, then, for so long as he or she continues to hold the judicial office held by him or her on being so appointed, the number of ordinary judges of the High Court otherwise provided for under any enactment for the time being in force may be exceeded by one.
- (2) If the person so appointed is a former President of the High Court, the proviso to paragraph (b) (inserted by the Courts (No. 2) Act 1997) of section 14(1) of the Law Reform Commission Act 1975 applies to him or her in respect of his or her appointment as a member of the Ombudsman Commission to the like extent as it applies to a former President of the High Court who is appointed to be a member of the Law Reform Commission.
- (3) If the person so appointed is the President of the High Court, he or she may, for so long as he or she continues to be a member of the Ombudsman Commission, from time to time appoint an ordinary judge of the High Court to exercise on his or her behalf (and which judge is hereby empowered to exercise) all jurisdiction exercisable by the President of the High Court under section 10(5) of the Courts (Supplemental Provisions) Act 1961.

Section 82.

## SCHEDULE 5

## BREACH OF DISCIPLINE

1. Discourtesy, that is to say, failing to behave with due courtesy towards a member of the public.
2. Neglect of duty, that is to say, without good and sufficient cause—



- (a) failing or neglecting—
- (i) properly to account for any money or property received by the member of the Garda Síochána in his or her capacity as a member, or
  - (ii) promptly to do any thing that it is his or her duty as a member of the Garda Síochána to do,
- or
- (b) doing anything mentioned in *subparagraph (a)(ii)* in a negligent manner.
3. Falsehood or prevarication, that is to say, in the capacity of a member of the Garda Síochána—
- (a) making or procuring the making of—
- (i) any oral or written statement, or
  - (ii) any entry in an official document or record,
- that, to the member's knowledge, is false or misleading,
- or
- (b) doing any of the following with a view to deceiving any person:
- (i) destroying or mutilating any official document or record;
  - (ii) altering or erasing or adding to any entry in an official document or record.
4. Abuse of authority, that is to say, oppressive conduct towards a member of the public, including—
- (a) without good and sufficient cause, making an arrest, or
- (b) using unnecessary violence towards any person with whom the member of the Garda Síochána is brought into contact in the execution, or purported execution, of his or her duty.
5. Corrupt or improper practice, that is to say—
- (a) soliciting or receiving as a member of the Garda Síochána and without the consent of the Garda Commissioner any gratuity, present, subscription or testimonial (other than customary collections for such purposes as presentations to members on the occasion of transfer, marriage or retirement),
- (b) placing himself or herself as a member of the Garda Síochána under a pecuniary obligation to any person in a manner that might affect the member's ability to discharge the duty of a member,
- (c) improperly using (or attempting to use) his or her position as a member of the Garda Síochána for his or her private advantage, or
- (d) failing wilfully and without good and sufficient cause to pay any lawful debt in such circumstances as to be liable to

affect his or her ability to discharge the duty of a member or as to be liable to compromise other members.

6. Misuse of money or property in the custody of the Garda Síochána belonging to a member of the public, that is to say, misappropriating, or wilfully or carelessly misusing, losing or damaging, any such money or property.

7. Intoxication, that is to say, owing to the effects of intoxicating liquor or drugs or a combination of liquor and drugs, being unfit for duty either while on duty or while not on duty but wearing a uniform in a public place.

8. Discreditable conduct, that is to say, conducting himself or herself in a manner that the member knows, or ought to know, would be reasonably likely to bring discredit on the Garda Síochána.

9. Accessory to conduct specified in this Schedule, that is to say, conniving at or knowingly being an accessory to such conduct.