

LAW SOCIETY SUBMISSION



GENERAL SCHEME OF THE POLICING, SECURITY AND COMMUNITY SAFETY BILL

COMMITTEE ON JUSTICE

FEBRUARY 2022

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1. The Law Society of Ireland ('the **Society**') welcomes the introduction of the General Scheme of the Policing, Security and Community Safety Bill ('the **General Scheme**') as a vital part of the government's commitment to implementing the recommendations of the Commission on the Future of Policing in Ireland (**CoFPI**) which issued its recommendations in late 2018. It also supports the commitment from the Department of Justice ('the **Department**') to human rights and equality values in developing policing services to improve the safety of individuals and communities and to enhance independent governance and accountability.
- 1.2. The Society is the educational, representative and co-regulatory body for the solicitors' profession in Ireland. This submission provides views from members of the Society's Human Rights & Equality Committee, which is comprised of solicitors with extensive experience and expertise in national and international human rights, as well as comprehensive knowledge of policing services. It should be noted that Committee member, Shalom Binchy, is also a member of the Policing Authority. Further, a consultant to the Committee, Noeline Blackwell, was a member of the CoFPI. The views expressed in this submission do not reflect the views of the Policing Authority or the CoFPI.
- 1.3. In preparing this submission, the Society notes the expanse of issues to be addressed by the Department's work which spans a number of legal areas. As such, the Society has chosen to focus on human rights and equality concerns, identifying where amendments to the General Scheme may be appropriate and addressing the wider issue of the effective administration of justice in the State.

2. Independent Governance

- 2.1. The Society considers the enhancement of independent governance and monitoring of An Garda Síochána as a positive development. The roles and duties of any new agencies will require to be clearly outlined and every precaution taken to ensure that additional bureaucratic processes do not inhibit the principal aim of the General Scheme in making communities safer. In particular, we welcome the introduction of the new Policing and Community Safety Authority ('the **Authority**'), the increased independence of the Ombudsman and the expanded remit of that office.
- 2.2. Although Head 154 addresses the confidentiality of information obtained by the Ombudsman and his officers, we are concerned that complainants, particularly vulnerable complainants, may still be fearful of retribution for making a complaint against a member of An Garda Síochána. In this regard, the Society suggests that consideration be given to strengthening the function of the Ombudsman to allow people to raise concerns without necessarily making a complaint. In making this recommendation, the Society is mindful of the need to balance the rights of the complainant in respect of confidentiality and privacy against the right of the accused to fair procedures and a defence.
- 2.3. The Society notes that Head 104 makes provision for the Authority to conduct, at its own initiative, inspections in relation to any particular aspects of the operation and administration of An Garda Síochána which relate to policing services. Greater clarity will be needed in respect of what such inspections might involve e.g. the precise powers to be granted, and compliance with international instruments such as the Optional Protocol to the Convention Against Torture (**OPCAT**) once ratified by the State.
- 2.4. The Society has called for the State to progress ratification and implementation of a number of outstanding international treaties, including OPCAT, as a matter of priority in its March submission on Ireland's Third National Report to the UN Universal Periodic Review 2021. To do so would greatly enhance governance, oversight and accountability by introducing an effective means to ensure the independent professional scrutiny of police services as a means to enhance the promotion of excellence in policing standards.

3. Collaborative Approach

- 3.1. The Society welcomes the commitment to an all-government collaborative approach to community safety. In particular, we note the provision under Head 74 to empower the Garda Commissioner to exchange information with relevant persons or bodies within and outside the State. While the Society recognises the provision as a component in inter-agency collaboration, we would emphasise the vital balance to be struck between the right to privacy and the right to access information. Further, we would advise that further consideration be given to the potential for the General Data Protection Regulation (GDPR) to act as an obstacle to information sharing, which must be further considered in establishing how the exchange of information will operate (between agencies and organisations) in practice.
- 3.2. While noting that the proposed legislation will obligate the Authority to share information, the Society suggests that this be expanded to ensure that other agencies are similarly bound to such a collaborative approach. This is particularly important within the context of Minister McEntee's confirmation that the legislation will involve a 'whole of government' approach with departments and agencies (such as health and social services, education authorities and local authorities, the Gardaí and the wider community) working together.

4. Adequate Resourcing

- 4.1. While we are aware that the proposed legislation involves considerable change to existing systems, including the establishment of new agencies and services, we would emphasise the need to ensure that adequate resourcing is put in place to assist in the delivery of effective change. While we very much welcome the commitment to enhance community policing, it is an example of an area which, unless properly resourced, will not be truly effective across communities.
- 4.2. The Society has been informed anecdotally that certain communities are experiencing what they regard as a lack of visibility of policing services on the ground, and a particular lack of community guards. This has a direct impact on the relationship between An Garda Síochána and the communities they serve, which can often lead to a breakdown in trust and connection.

5. Human Rights and Equality Standards

- 5.1. The Society welcomed the Minister's confirmation that '*this legislation will, when enacted, underpin the human rights focus of policing in Ireland*' and commends the emphasis given to the human rights commitment.
- 5.2. In order to ensure that the new approach to policing in Ireland will be suitably grounded in human rights and equality values, the Society recommends that the new Authority amend the Code of Ethics to include a specific requirement to adhere to human rights standards. Breach of the Code could then (presumably like any other such breaches) fall to be considered as a disciplinary matter.
- 5.3. It is unclear whether a human rights impact assessment (**HRIA**) has already been conducted in relation to the General Scheme. If so, the contents of same should be made publicly available to assist stakeholders in fully assessing the impact of the proposed legislation.
- 5.4. If not yet completed, the Society recommends that any HRIA should adequately consider the full extent of resources required to ensure the legislation's effectiveness and the human rights and equality implications of same.

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