



CIGIREACHT AN GHARDA SÍOCHÁNA
GARDA SÍOCHÁNA INSPECTORATE

Submission to the Houses of the Oireachtas Joint Committee on Justice

General Scheme of the Policing, Security and Community Safety Bill

13 August 2021

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1. Introduction

The Garda Síochána Inspectorate (the Inspectorate) is pleased to make a submission to the Houses of the Oireachtas Joint Committee on Justice (the Committee) on the General Scheme of the Policing, Security and Community Safety Bill 2021.

The Inspectorate welcomes the publishing of the General Scheme which seeks to implement the Report of the Commission on the Future of Policing in Ireland (CoFPI).

The Scheme proposes to:

- Recognise the role of the Garda Síochána in the prevention of harm, particularly to those who are at risk or vulnerable and to place a reciprocal obligation on relevant Departments of State and other public service bodies to cooperate with the Garda Síochána and each other in relation to the broader issue of community safety;
- Provide for a new coherent governance and oversight framework for policing to strengthen the governance of the Garda Síochána, to ensure clear and effective independent oversight and to ultimately deliver better policing;
- Create a strategic framework at national and local level to enhance the safety, and perception of safety in communities. This will be achieved through greater collaboration between relevant Departments of State and public service bodies as well as through engagement with local communities to prevent crime and harm; and
- Strengthen oversight of security legislation.

The Scheme includes 9 Parts and a number of Schedules. Observations and suggestions on relevant heads in Parts 1-8 which contain substantial proposals, are set out in this submission (section 3) to assist the Committee in its scrutiny of the Scheme.

2. Executive Summary

Part 1 - Preliminary and General Matters

1. Among other matters this part defines “security services” and identifies the functions of the Garda Síochána referred to in Head 8, that are concerned with protecting the security of the State for the purposes of defining the remit of the Policing and Community Safety Authority (the Authority) to be established under Part 4 which concerns oversight

of the performance of the Garda Síochána in relation to policing services. It also provides that where a question or dispute arises as to whether a particular matter relates to policing services or security services, the question or dispute shall be submitted to the Minister for determination.

2. The General Scheme separates security services from policing services and the oversight arrangements will also be separated with the Independent Examiner having responsibility for oversight of security services and the Authority being responsible for oversight of policing services. There is not always such clear lines between those criminals and organised criminal networks involved in serious crime and other crimes that impact on communities. There are also overlaps in the policing tactics and policing powers that are used. For example, those who pose a threat to national security may also be involved in serious criminality that is covered by policing services. This could lead to a large number of matters being referred to the Minister for determination as to whether they relate to security or policing services. It is important to ensure that there are no gaps in oversight in this most critical area.

Part 2 An Garda Síochána

1. The Inspectorate welcomes the inclusion in the principles of policing that policing services will be provided in a manner that protects and vindicates human rights. The Inspectorate believes that for the Garda Síochána to continue to maintain the confidence and trust of those they serve, it is an absolute requirement that policing services be provided in this manner. The recognition of the role of the Garda Síochána in the prevention of harm in our communities is also welcomed.
2. The relationship between the Garda Commissioner, the Garda Board and the Policing and Community Safety Authority (the Authority) should be transparent and easily understood. To avoid confusion in relation to their objectives and functions, clear lines of accountability and oversight should be provided for in the General Scheme.
3. Despite the concept of a single organisation, where the personnel of the Garda Síochána comprise members and members of garda staff, it is notable that the wording of the solemn declaration is different for garda members and for garda staff and the arrangements for taking it also differ. This is written in a way that is not inclusive.
4. The Inspectorate welcomes the intention to open up entry routes into the Garda Síochána. The Inspectorate submitted an advice paper to the Minister in May 2018 on this matter which advised that barriers to opening up entry routes to the Garda Síochána need to be addressed by the creation of new entry routes which allow for direct entry across all ranks.

Part 3 Community Safety

1. As highlighted in Part 1 above, provision is made for the setting of priorities for policing services by the Authority while the Minister is responsible for the setting of priorities for security services. The General Scheme separates security services from policing services and the oversight arrangements will also be separated with the Independent Examiner having responsibility for oversight of security services and the Authority being responsible for oversight of policing services. There is not always such clear lines between those criminals and organised criminal networks involved in serious crime and other crimes that impact on communities. There are also overlaps in the policing tactics and policing powers that are used. For example, those who pose a threat to national security may also be involved in serious criminality that is covered by policing services. It is important to ensure that there are no gaps in oversight in this most critical area.
2. This part of the Scheme provides for a national strategy on community safety to serve as an overarching policy framework and contains a programme of actions to underpin a whole of government approach to community safety nationally. It also provides for the establishment of local community safety partnerships to develop and implement local community safety plans that respond to the specific needs of the community. This supports a recommendation previously made by the Inspectorate.
3. In providing local policing services gardaí are routinely dealing with people or matters that require the assistance of, or the action of, another body or agency. The Inspectorate previously made recommendations that called for improved co-operation across government department's agencies and bodies. For cross sectoral co-operation to succeed in making communities safer and reducing harm, there needs to be a recognition by key players of their role, a strategic commitment to meeting their responsibilities and where necessary, providing an appropriate level of resources.
4. Community safety partnerships in other jurisdictions are not solely focused on the activity of the police and partnerships have senior representation from many other agencies and bodies. In the Scheme, apart from local authorities and the police, it is unclear what other state agencies or bodies will become core members of local community safety partnerships.
5. While the Inspectorate welcomes the inclusion of an obligation on Departments of State and other public service bodies when performing their functions to take account of the importance of taking steps to support the delivery of community safety, it is unclear what state agencies or bodies will become core members of local community safety partnerships.

Part 4 - Establishment and Functions of Policing and Community Safety

1. Part 4 of the General Scheme provides for the establishment of the Policing and Community Safety Authority which will supersede the Inspectorate and the Policing Authority. A principal function of the new Authority will be to carry out inspections in

relation to any particular aspects of the operation and administration of the Garda Síochána relating to policing services. To support the expedient performance of this function, the Scheme makes welcome provision for the appointment of Inspectors of Policing Services, and the conducting of joint inspections.

2. It also provides for the agreement of a memorandum of understanding (MOU) concerning the conduct of inspections including unannounced visits to relevant locations. The Inspectorate is of the view that some of these matters, such as the furnishing of documentation and information would be strengthened if they were laid out in legislation. With regards to the completion of an MOU, the Inspectorate believes that a time limit should be set in the legislation for its completion.
3. As the Authority will be limited to the functions of the Garda Síochána as they relate to the delivery of policing services, it will reduce the scope of the inspection function that currently exists in the Inspectorate. As such, the Authority will not be empowered to scrutinise the Garda Síochána's performance and professional standards as they relate to National Security, State Security and Security. It is important to ensure that there are no gaps in the oversight arrangements in this most critical area.
4. The Inspectorate is of the view that the provision for providing documentation should be extended to require the Garda Commissioner to also provide any information in the possession of the Garda Síochána, which is in the opinion of the Authority necessary for carrying out or in connection with its functions. This provision should be similar to Head 177 relating to the provision of information to the Garda Ombudsman by the Garda Síochána.

Part 5 - Office of the Garda Síochána Ombudsman and Part 6 Complaints, incidents of concern, investigations and other procedures

1. The Inspectorate welcomes the provision to provide for the reform of the structures of the Garda Síochána Ombudsman Commission.
2. The expansion of the remit of the new Office of the Garda Ombudsman to include garda staff and a broader oversight role in relation to allegations of wrong doing notwithstanding the absence of a complaint from a member of the public is also welcome.

Part 7 - Independent Examiner of Security Legislation

1. This part of the Scheme provides for the establishment of the Independent Examiner of Security Legislation. The functions of the Examiner are to keep under review the operation of effectiveness of security legislation, and consider whether security legislation remains necessary and fit for purpose, and contains appropriate safeguards for protecting the rights of individuals.

2. The Garda Síochána Act 2005 allows for the conducting of inspections by the Inspectorate in relation to both policing and security services. The General Scheme separates security services from policing services and the oversight arrangements will also be separated with the Independent Examiner having responsibility for oversight of security services and the Authority being responsible for oversight of policing services. There is not always such clear lines between those criminals and organised criminal networks involved in serious crime and other crimes that impact on communities. There are also overlaps in the policing tactics and policing powers that are used. For example, those who pose a threat to national security may also be involved in serious criminality that is covered by policing services.

It is important to ensure that there are no gaps in oversight between the role of the Independent Examiner and the Authority in this most critical area.

3. Although the Scheme provides for the Authority to carry out joint inspections with other statutory agencies, it is unclear if the Authority can carry out joint inspections with the Examiner.

Part 8 Miscellaneous and Regulations

1. The Inspectorate welcomes the provision under this Part of the capacity for the Garda Commissioner, the Policing and Community Safety Authority, and the Office of the Garda Síochána Ombudsman to share information. This will support each of the bodies in expeditiously performing their respective functions.

3. Head by Head Observations and Suggestions

Part 1 Reference	Observations and Suggestions
Head 3	<p>Definition of Security Services</p> <p>This head defines “security services” and identifies the functions of the Garda Síochána referred to in Head 8. that are concerned with protecting the security of the State for the purposes of defining the remit of the Policing and Community Safety Authority to be established under Part 4 which concerns oversight of the performance of the Garda Síochána in relation to policing services Security Services (3) and (4)</p> <p><i>3) Where a question or dispute arises as to whether a particular matter relates to policing services or security services, the question or dispute shall be submitted to the Minister for determination.</i></p> <p><i>(4) The determination by the Minister of the question or dispute referred to him or her under subhead (3) shall be final.</i></p> <p>The Garda Síochána Act 2005 allows for the conducting of inspections by the Inspectorate in relation to security services, and allows the Minister to exclude from the copies of reports which are to be laid before the Houses of the Oireachtas any matter which, would be prejudicial to the interests of national security.</p> <p>The General Scheme separates security services from policing services and the oversight arrangements will also be separated with the Independent Examiner having responsibility for oversight of security services and the Authority being responsible for oversight of policing services. There is not always such clear lines between those criminals and organised criminal networks involved in serious crime and other crimes that impact on communities. There are also overlaps in the policing tactics and policing powers that are used. For example, those who pose a threat to national security may also be involved in serious criminality that is covered by policing services. This could lead to a large number of matters being referred to the Minister for determination as to whether they relate to security or policing services.</p> <p>It is important to ensure that there are no gaps in oversight between the role of the Independent Examiner and the Authority in this most critical area</p>

Part 2 Reference	Observations and Suggestions
Head 7	<p>Principles of Policing (a) and (c) <i>a) effective policing services improve the safety of persons, localities and communities in the State</i></p> <p><i>(c) effective policing relies on securing public support and confidence</i></p> <p>While these principles include the provision for “effective policing services” and “effective policing”, the Inspectorate is of the view that “efficient policing “should also be included as a principle. The efficient use of resources is equally important to the provision of policing services, the safety of communities and public confidence in policing.</p> <p>Principles of Policing (b) and (e) The Inspectorate welcomes the inclusion in the principles that policing services will be provided in a manner that protects and vindicates human rights. The Inspectorate believes that, for the Garda Síochána to continue to maintain the confidence and trust of those they serve, it is an absolute requirement that policing services be provided in this manner.</p>
Head 8	<p>Functions of the Garda Síochána (f) and (h) <i>(f) preventing harm to individuals in particular those who are vulnerable or at risk</i> <i>(h) protecting and supporting victims of crime</i></p> <p>While the Inspectorate welcomes these additions to the functions of the Garda Síochána, there does not appear to be a definition of vulnerable. As these functions are carried forward into Part 3 and joint working between departments, it is important to define what is meant by vulnerable in the General Scheme.</p>
Head 9	<p>Prosecution of Offences (2) <i>Subject to subhead (3), any member of An Garda Síochána may institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of the Director of Public Prosecutions.</i></p> <p>The responsibility for prosecution decisions and presenting cases at court in most other policing jurisdictions rests solely with an independent prosecution service. The Inspectorate has been a long-term advocate of removing the entire prosecutorial function from the Garda Síochána and assigning it to the Director of Public Prosecutions. This view was supported by the Commission on the Future of Policing in Ireland.</p> <p>The Inspectorate’s latest report on Countering the Threat of Internal Corruption in the Garda Síochána (2021) raises a number of issues about the prosecution of certain lower level offences by the Garda Síochána, particularly in relation to inadequate supervision. Recommendation 19 sets out a number actions for the</p>

	Garda Síochána to take in order to strengthen the supervision of cases it prosecutes.
Head 11	<p>Role of the Garda Board (1) (c) <i>Monitor implementation of organisational performance and oversee major capital expenditure and investment having regard to head 55.</i></p> <p>The role of the Board to monitor implementation of performance objectives and organisational performance appears to be very similar to the objective of the Authority (Head 104) to oversee and assess in an independent and transparent manner the performance by the Garda Síochána of its functions relating to policing services in order to support the effective provision of such services to the benefit of the safety and wellbeing of the public.</p> <p>Notwithstanding the new Authority’s more limited role in relation to policing services when compared to the current Policing Authority, it is difficult to see the difference in these two responsibilities. As such, the roles appear to overlap and could create the potential for confusion.</p> <p>Relationship between the Commissioner, the Garda Board and the Authority The relationship between the Garda Commissioner, the Garda Board and the Authority should be transparent and easily understood. To avoid confusion in relation to their objectives and functions clear lines of accountability and oversight should be provided for in the General Scheme.</p>
Head 25	<p>Functions of the Garda Commissioner Similar to the comment in Head 11, the relationship between the Garda Commissioner, the Garda Board and the Authority is not outlined and needs to be clarified. This has the potential to lead to confusion in relation to the alignment of strategy with high-level goals and the prioritisation of the use of resources.</p> <p>The relationship between the Garda Commissioner, the Garda Board and the Authority should be transparent and easily understood. To avoid confusion in relation to their objective and functions clear lines of accountability and oversight should be provided for in the General Scheme.</p>

<p>Head 34</p>	<p>Provision of police services for certain events (3) <i>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 head, but only in the circumstances and to the extent authorised by regulation under head 21.</i></p> <p>The Inspectorate in its Countering the Threat of Internal Corruption report (2021) found that local arrangements for providing policing services (non-public duty) for many different types of events had been developed. This results in ad hoc practices and inconsistencies in the provision of resources to police local events and the charging practices for providing such services. Recommendation 22 of the report proposes that the Garda Síochána should develop, publish and implement policy and guidance on charging for non-public duty.</p>
<p>Head 37</p>	<p>Member's solemn declaration Despite the concept of a single organisation, where the personnel of the Garda Síochána comprise members and members of garda staff, it is notable that the wording of the solemn declaration is different for garda members and for garda staff and the arrangements for taking it also differ. This is written in a way that is not inclusive.</p> <p>The New Zealand Police has taken a more inclusive approach. While the solemn undertaking and the oath are different because of the provision of police powers, all employees make an undertaking first and constable's further take the oath. This is a process that could be suitable for adoption and inclusion in the General Scheme.</p>
<p>Head 38</p>	<p>Appointment of persons to Ranks of Assistant Garda Commissioner and Chief Superintendent The use of the word person instead of member as used in the Garda Síochána Act 2005 opens up entry to these ranks to police officers in other jurisdictions.</p> <p>Following the submission of an Inspectorate advice paper on opening up entry routes into the Garda Síochána, the Inspectorate welcomes the intention to extend eligibility for appointment to assistant garda commissioner and chief superintendent to police officers in other jurisdictions.</p>
<p>Head 41</p>	<p>Appointment of persons to ranks below rank of chief superintendent As highlighted in Head 38, the Inspectorate welcomes the intention to open up entry routes into the Garda Síochána. The Inspectorate submitted an advice paper to the Minister in May 2018 which advised that barriers to opening up entry routes to the Garda Síochána needed to be addressed. This included further recommendations to provide entry routes which allow for direct entry across the ranks, including the sergeant and inspector ranks.</p>

	<p>In relation to appointment of persons to ranks below rank of chief superintendent, the Inspectorate advice included:</p> <ul style="list-style-type: none"> ➤ That similar reciprocal arrangements as exist for senior appointment processes in the PSNI and Garda Síochána under the Intergovernmental Agreement on Police Co-operation be developed to allow access to the sergeant and inspector promotional processes in both jurisdictions. ➤ That a Direct Entry Inspector programme to attract candidates with appropriate leadership and management experience in organisations outside the Garda Síochána be developed. ➤ That the case for developing a direct entry programme for superintendent be reviewed after the implementation of the proposed Direct Entry Inspector programme is fully evaluated.
<p>Head 42</p>	<p>Appointment of reserve members (1) <i>The Garda Commissioner may, subject to the regulations, appoint persons as reserve members of An Garda Síochána.</i></p> <p>The Inspectorate welcomes the removal of the term “to assist it in performing its function” as used in 15(1) of the Garda Síochána Act 2005 which limits the role of reserve members to one of assisting.</p> <p>The Inspectorate’s report Policing with Local Communities (2018) found that the Garda Reserve is an important element of the garda workforce and, with the right leadership and support in place, it can deliver an additional and important uniformed presence in local communities .The report recommends that Reserves should be authorised to patrol independently and to use the powers for which training was provided.</p>
<p>Head 45</p>	<p>Appointment of members of garda staff (1) <i>The Garda Commissioner may appoint persons (to be known as “garda staff”) to carrying out of the functions of the Garda Síochána and may determine their duties.</i></p> <p>The Inspectorate is pleased to note that this sub-head refers to Garda Staff “carrying out the functions of the Garda Síochána.” Which makes it clear that the role of garda staff is to assist in the carrying out of the functions of the Garda Síochána i.e. the provision of policing and security services.</p> <p>The Inspectorate found in its reports Changing Policing in Ireland (2015) and Policing with Local Communities (2018) that the use of garda staff centred on clerical support and lacked imagination There was also a general absence of acknowledgement of the benefits of high-level management, technical skills and qualifications that garda staff could bring.</p> <p>The Inspectorate has recommended previously that garda members on duties that do not require police powers should be replaced by garda staff to facilitate the release of members back to front-line duties. This recommendation is echoed in report of the</p>

	<p>CoFPI. This Head will facilitate the recruitment of staff by the Commissioner with the necessary specialist, technical and other skills to release garda members of all ranks for front-line duties.</p>
<p>Head 46</p>	<p>Garda staff undertaking As per the comments in Head 37, despite the concept of a single organisation, where the personnel of the Garda Síochána comprise members and members of garda staff, it is notable that the wording of the solemn declaration is different for garda members and for garda staff and the arrangements for taking it also differ. This is written in a way that is not inclusive.</p> <p>As also explained in Head 37, the New Zealand Police has taken a more inclusive approach. While the solemn undertaking and the oath are different because of the provision of police powers, all employees make an undertaking first and constable's further take the oath. This is a process that could be suitable for adoption and inclusion in the General Scheme.</p>
<p>Heads 49</p>	<p>Setting of priorities by Authority for policing services As highlighted in Part 1 above, provision is made for the setting of priorities for policing services by the Authority while the Minister is responsible for the setting of priorities for security services.</p> <p>The General Scheme separates security services from policing services and the oversight arrangements will also be separated with the Independent Examiner having responsibility for oversight of security services and the Authority being responsible for oversight of policing services. There is not always such clear lines between those criminals and organised criminal networks involved in serious crime and other crimes that impact on communities. There are also overlaps in the policing tactics and policing powers that are used. For example, those who pose a threat to national security may also be involved in serious criminality that is covered by policing services.</p> <p>It is important to ensure that there are no gaps in the setting of priorities between the Minister and the Authority in this most critical area.</p>
<p>Head 50</p>	<p>Setting of priorities by Minister for security services While it is noted that before determining or revising priorities or establishing or revising performance targets under this head, the Minister must consult with (a) the Garda Commissioner, and (b) such other persons as the Minister considers appropriate.</p> <p>The Inspectorate is of the view that the National Security Analysis Centre, established as a result of a recommendation in the CoFPI report to bring the various relevant agencies of the State together, to pool expertise and information and produce a comprehensive picture of the threats to the State. As such, it, should be specified in the Act as a body that the Minister must consult with when setting of priorities under this head.</p>

	<p>As highlighted in Part 1 above, provision is made for the setting of priorities for policing services by the Authority while the Minister is responsible for the setting of priorities for security services. The General Scheme separates security services from policing services and the oversight arrangements will also be separated with the Independent Examiner having responsibility for oversight of security services and the Authority being responsible for oversight of policing services. There is not always such clear lines between those criminals and organised criminal networks involved in serious crime and other crimes that impact on communities. There are also overlaps in the policing tactics and policing powers that are used. For example, those who pose a threat to national security may also be involved in serious criminality that is covered by policing services.</p> <p>It is important to ensure that there are no gaps in the setting of priorities between the Minister and the Authority in this most critical area.</p>
Part 3 Reference	Observations and Suggestions
Head 92	<p>Regulations concerning Local Community Safety Partnerships (1)</p> <p><i>(b). providing a consultative forum for the preparation of the local policing plan and its implementation.</i></p> <p>Apart from local authorities and the police, it is unclear what other state agencies or bodies will become core members of Local Community Safety Partnerships. The regulations to be made under this head should specify who appoints persons or bodies to the partnerships and place an obligation on the person or body to fully participate in the work of the partnership.</p> <p>(2) (l) Attendance at Meetings <i>The attendance of representatives of the Policing and Community Safety Authority at meetings of the safety partnership and its committees for the purposes of performing its functions.</i></p> <p>Facilitating the attendance of representatives of the Policing and Community Safety Authority at meetings of the safety partnership and its committees will greatly assist the new oversight body to perform its functions as set out in Head 104.</p> <p>(n) Cooperation of the CSP with other committees/groups <i>The cooperation of the safety partnership with other safety partnerships and local community development committees.</i></p> <p>While outlining the principle (to be provided for in regulations) of the cooperation of the safety partnership with other safety partnerships and local community development committees and such other bodies or persons as required, the Inspectorate believes that it is important to clarify how they will interact with each other. For example, Sex Offender Risk Assessment and</p>

	<p>Management (SORAM) committees which support enhanced levels of co-operation and co-ordination between key statutory organisations involved in managing the risks posed to the community by convicted sex offenders operate across Ireland. It is unclear if these committees will have any reporting line to, or relationship with, the Local Community Safety Partnerships. In some jurisdictions, Community Safety Partnerships provide the strategic lead for other committees with a community safety responsibility. This would include committees or groups who are responsible for child protection, youth offending and sexual and violent offender management.</p>
Head 93	<p>Functions of Local Community Safety Partnerships <i>(1) (i) providing views to the relevant divisional officer on the preparation of the local policing plan and on progress on the implementation of the plan in relation to its functional area.</i></p> <p>It appears that the regulations may only make provision for Local Community Safety Partnerships to provide views on the preparation of the Garda Síochána local policing plans and that the regulations may not provide for the partnerships to provide views on the plans of other members of the partnership.</p>
Head 94	<p>Staffing of Local Community Safety Partnerships The creation of community safety managers and providing sufficient staffing are considered by the Inspectorate to be essential elements that will be critical to the success of Local Community Safety Partnerships. It is also worth noting that in other jurisdictions this has led to the creation of multi-agency co-located units that include the assignment of police officers and other members of the police workforce.</p>
Head 95	<p>Duties of Departments of State and other Public Service Bodies <i>(1) A Department of State or other public service body shall, in performing its functions, take account of the importance of taking steps to support the delivery of community safety including through the prevention of crime and the prevention of harm to individuals in particular those who are vulnerable or at risk.</i></p> <p>The Inspectorate welcomes the inclusion of an obligation on Departments of State and other public service bodies when performing their functions to take account of the importance of taking steps to support the delivery of community safety.</p>
Part 4 Reference	Observations and Suggestions
Head 98	<p>Name of the New Oversight Body As the functions of the new oversight body as outlined in the heads in connection with community safety are more limited than the role envisaged by the CoFPI report. The inclusion of community safety in its name could lead to confusion as to the core objective of the Authority which is to provide oversight of the Garda Síochána and the performance of its functions relating to the provision of</p>

	<p>policing services, rather than community safety. It may also lead to confusion between the roles of the Authority, the National Community Safety Steering Group and the National Office for Community Safety.</p>
<p>Head 104</p>	<p>Objectives and Functions of Authority A number of the current Policing Authority functions, are not included in the functions of the Authority. For example, the appointment to senior ranks will become a matter for the Commissioner.</p> <p>The report of CoFPI envisages the purpose of the Garda Board as strengthening the governance and accountability of the organisation, holding the Commissioner and senior management to account for the effective performance of their responsibilities and providing a more appropriate framework of governance between the Department of Justice and the Garda Síochána than currently exists.</p> <p>At this time, it is unclear to the Inspectorate what impact this may have on general oversight of the Garda Síochána. Without a clear understanding of how the Garda Board will operate in practice and without knowledge of how transparent their processes will be, it is difficult to comment on how the new governance structure will impact on oversight of the Garda Síochána. With an appropriate level of transparency by the Garda Board, oversight of policing might still be strong. However, if this oversight is not transparent, then oversight may be weakened or perceived to be weakened.</p> <p>As the Authority will be limited to the functions of the Garda Síochána as they relate to the delivery of policing services, it will diminish the inspection function that currently exists in the Inspectorate. As such, the Authority will not be empowered to scrutinise the Garda Síochána’s performance and professional standards as they relate to National Security, State Security and Security Services and it appears that the inspection function will be unable to conduct inspections into these aspects of policing.</p> <p>It is important to ensure that there are no gaps in oversight between the role of the Independent Examiner and the Authority in this most critical area.</p> <p>As commented under Head 3, it is unclear if the Authority can carry out joint inspections with the Examiner.</p> <p>(2) (c) Inspect into any aspect of the operation or administration <i>to carry out at its own initiative or at the request of the Minister Inspections in relation to any particular aspects of the operation and administration of An Garda Síochána relating to policing services including in relation to adherence to human rights standards and cooperation with other public service bodies to enhance community safety) and make recommendations to the</i></p>

	<p><i>Garda Commissioner or the Minister as the case may be for any action that the Authority considers desirable.</i></p> <p>While the Inspectorate has traditionally made recommendations to the Garda Commissioner or to the Department of Justice, it has also made cross sectoral recommendations in a number of its reports including the recently published report on Countering the Threat of Corruption in the Garda Síochána (2021). Additionally, with new community safety responsibilities and the ability to conduct joint inspections, recommendations are likely to be cross sectoral and far broader. This subhead appears to preclude the Authority from making recommendations to anyone other than the Minister for Justice and the Commissioner.</p> <p>(2) (f) To advise on, and monitor the implementation by An Garda Síochána of any recommendations arising from investigations, inquiries or reviews carried out by bodies other than the Authority as it considers appropriate or at the request of the Minister.</p> <p>It is not clear who the Authority is expected to advise and who is responsible for considering the advice, deciding to accept the advice and acting on the advice.</p> <p>(2) (h) Promote professional policing standards (including human rights standards)</p> <p>It is unclear who is responsible for setting the professional policing standards and if the professional policing standards referred to are the Ethical Standards and Commitments set out in the Garda Code of Ethics. In England and Wales, the Standards of Professional Behaviour that apply to all police officers have been set out by the Home Office by way of statutory guidance</p> <p>(2) (k)(i) to keep itself generally informed of trends and patterns in the use of force by members of An Garda Síochána.</p> <p>The Inspectorate recommended in its report on Public Order Policing (2019) that the external oversight of garda use of force trends should be incorporated into the performance monitoring activities of the Policing Authority and any subsequent oversight body. As such, this head should be strengthened to reflect the monitoring role envisaged by the Inspectorate.</p> <p>(2)(m)(i) promote improvements in standards for those matters and public awareness of them.</p> <p>As highlighted in (2) (h) policing standards are not defined or explained.</p>
<p>Head 110</p>	<p>Annual Business Plan (3)&(5)</p> <p>(3) The business plan shall for the year to which it relates indicate <i>the Authority’s activities, and shall in particular –</i></p> <p><i>(a) set out priorities for inspections to be carried out (including any joint inspections), and information on how such inspections will be carried out in a way which is -</i></p> <p><i>(i) proportionate, accountable and transparent, and</i></p>

	<p><i>(ii) ensures the integrity and objectivity of the findings of such inspections,</i> <i>(5) The Authority shall keep the business plan under review, and may from time to time revise the plan.</i></p> <p>While it is important to deliver inspections that are in the business plan, it is also important that the Authority has the ability to respond to an emerging and significant policing issue or to a request from the Minister that is outside of the business plan process. These subheads appear to provide such flexibility.</p>
<p>Head 113</p>	<p>Appointment of Inspectors of Policing Services</p> <p>(1) and (6) Appointment and Experience The Inspectorate welcomes the appointment of inspectors of policing services and in doing so it acknowledges the importance of service as a senior officer or retired such officer in the police service of another state, or having otherwise obtained such relevant experience, qualifications, training or expertise. Because of the important nature of this role and the high-skill set that is required, the Inspectorate believes that the recruitment process should be open and transparent.</p>
<p>Head 114</p>	<p>Powers of Inspectors of Policing Services <i>(2) As soon as practicable after the commencement of this head the Authority and the Garda Commissioner shall agree a memorandum of understanding concerning the conduct of inspections under head 104(2) (c) or (d).</i></p> <p>The Inspectorate believes that a time limit for the MOU to be agreed needs to be included. For example, within six or nine months of the commencement and to set out the procedure to be followed if it is not possible to agree an MOU within the set timeframe.</p> <p>In order for Inspectors of Policing Services to have all such powers as are necessary or expedient for the carrying out or in connection with inspections, the Inspectorate believes that under Head 104(2) (c) or (d), a head similar to 177 needs to be included. Head 177 provides that the Garda Commissioner shall, as soon as practicable, provide the Garda Ombudsman with such information and documents as the Garda Ombudsman may request for the purpose of, or in connection with, the exercise of any of his or her functions.</p> <p>The Inspectorate considers that the power to make unannounced visits at any time to any garda station or other premises or facility where members of garda personnel are assigned in connection with the provision of policing services should be explicitly set out in the General Scheme.</p>
<p>Head 115</p>	<p>Joint inspections While prescribing joint inspections is viewed by the Inspectorate as a positive step, it does not appear to be sufficiently strong enough</p>

	<p>to ensure that joint inspections will actually take place. Further consideration will be required as to whether the approach in this head and in particular the proposal to prescribe other inspection bodies is sufficient to empower those other bodies to undertake joint inspections.</p> <p>It is unclear if the Authority can carry out joint inspections with the Examiner and if prescribed bodies will have their own operating legislation changed to facilitate joint inspections.</p>
Head 116	<p>Reports of inspection or inquiry requested by the Minister <i>(4) The Minister may exclude from the copies of a report which is to be laid before the Houses of the Oireachtas any matter which, in his or her opinion might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person.</i></p> <p>The Inspectorate suggests that any matter that may jeopardise a discipline investigation should be considered as an additional reason for excluding that matter from a report.</p>
Head 117	<p>Reports of inspections or inquiries undertaken at Authority's own initiative <i>(2) As soon as practicable after giving a report to the Garda Commissioner and the Minister and subject to subhead (3) the Authority shall publish the report on the Internet, or in accordance with such other arrangement as it may consider appropriate.</i></p> <p>The Inspectorate welcomes the provision to facilitate the publication of the Authority's self-initiated inspections at this point.</p> <p><i>(3) The Authority may exclude from the report to be published any matter which, in its opinion might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person.</i></p> <p>The Inspectorate suggests that any matter that may jeopardise a discipline investigation should be considered as an additional reason for excluding that matter from a report.</p>

<p>Head 119</p>	<p>Cooperation of the Garda Síochána with inspections and inquiries (1) (b) the duty to provide on request by the Authority, any document relating to policing services in the power or control of An Garda Síochána.</p> <p>The Inspectorate is of the view that this provision should be extended to provide a duty to also provide any information in the possession of the Garda Síochána which is in the opinion of the Authority necessary for carrying out or in connection with an inspection or inquiry.</p> <p>This provision should be similar to Head 177 that requires that the Garda Commissioner shall, as soon as practicable, provide the Garda Ombudsman with such information and documents as the Garda Ombudsman may request for the purpose of, or in connection with, the exercise of any of his or her functions.</p>
<p>Head 122</p>	<p>(1) Accountability of Authority to Oireachtas Committees The Garda Síochána Act 2005 provides that the Chief Inspector of the Garda Inspectorate 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.</p> <p>This head, does not provide for similar parliamentary scrutiny of inspection reports from the Authority. The Inspectorate is of the view that such scrutiny should be provided for.</p>
<p>Part 5 Reference</p>	<p>Observations and Clarifications</p>
<p>Head 143</p>	<p>Objectives, functions and powers of Garda Ombudsman The Inspectorate welcomes the exclusion of a current GSOC function to conduct inspections or inquiries into practices, policies or procedures. This removes any overlaps with the functions of the Authority.</p>
<p>Head 149</p>	<p>Designation of officers Designation of officers and others for purpose of investigations under Part 6 This is a welcome addition that permits the Garda Ombudsman to delegate some of the current functions of the Commissioners to senior designated officers.</p>
<p>Part 6 Reference</p>	<p>Observations and Suggestions</p>
<p>Head 157</p>	<p>Interpretation The category of “incident of concern” is an area open to wide interpretation. It is noted that the precise threshold for notification is subject to further consideration.</p> <p>In the Inspectorate’s report on Countering the Threat of Internal Corruption in the Garda Síochána (2021), two recommendations</p>

	<p>are made in connection with the sharing of intelligence and the investigation of conduct. This includes a recommendation that the Garda Síochána should develop formal arrangements for the mutual sharing of intelligence between the Garda Síochána Ombudsman Commission, Law Enforcement Agencies and the Garda Anti-Corruption Unit.</p> <p>A further recommendation is made to the Department of Justice to implement the necessary statutory framework (in line with the State's obligations under the European Convention on Human Rights relating to effective independent investigation) to ensure that all instances of conduct linked to sexual violence or abuse of power for sexual gain arising from the actions of a member of the garda workforce acting in their professional capacity, which could result in a breach of an individual's rights under Article 2 or Article 3 of the European Convention on Human Rights are referred for independent investigation.</p> <p>This definition will have a significant impact on Head 165 in connection with the notification of incidents by the Garda Commissioner to the Garda Ombudsman.</p> <p>Definition of serious harm The inclusion of a sexual offence in the definition of serious harm provides clarity over what types of cases should be automatically referred by the Garda Commissioner to the Garda Ombudsman and removes the current confusion and inconsistency in this particular area. The Inspectorate believes that in order to satisfy the State's obligations under international law to carry out independent investigations, at a minimum, referrals under Head 165 from the Garda Commissioner should extend to cases where a member of the garda workforce is suspected of sexual violence or abuse of power for sexual gain against a member of the public or another garda employee. The Inspectorate is pleased to see that abuse of power for sexual gain is included in the definition of serious harm.</p> <p>Trainee gardaí While trainee gardaí are not attested, they could be treated in the same way as garda staff and the Inspectorate is unclear as to why they are not included in the provisions. With the recent COVID-19 crisis, trainee gardaí have been deployed to operational posts prior to completing their training at the Garda College and prior to them commencing their probationary period.</p>
<p>Head 159</p>	<p>Making and recording of complaints <i>(2) (b) Where a complaint is made to An Garda Síochána it may be made to—</i> <i>(b) any member of garda personnel at a Garda Síochána station</i></p> <p>Providing for a member of garda staff to receive a complaint provides more inclusivity and is a positive addition.</p>

<p>Head 160</p>	<p>Determination of admissibility of complaint, suitability for resolution by Garda Síochána</p> <p><i>5) For the purposes of making a determination under subhead (1) or (3) the Garda Ombudsman may make such enquiries as he or she thinks fit.</i></p> <p>This is a welcome inclusion and addresses a current legislative gap in the ability of GSOC (prior to determination) to make pre-admissibility inquiries into the circumstances of a complaint.</p> <p>For many complainants, an early intervention, explanation or apology will often resolve their complaint. This head may prevent the Garda Síochána from resolving service level or performance management complaints at the time that a complaint is made directly to the Garda Síochána.</p> <p><i>(9) Determining that a complaint is inadmissible</i> The removal of a provision to notify a member of the garda workforce who may be the subject of an inadmissible complaint removes an unnecessary requirement that is currently placed on GSOC.</p>
<p>Head 161</p>	<p>Categories of complaints suitable for resolution by An Garda Síochána</p> <p>As highlighted in Head 160 - For many complainants, an early intervention, explanation or apology at the time of making a complaint can often resolve their complaint this head may prevent the Garda Síochána from resolving service level complaints at the time that a complaint is made directly to a member of garda personnel.</p>
<p>Head 164</p>	<p>Matters concerning death of, or serious harm , to a person</p> <p><i>(1) The Garda Commissioner shall, without delay, refer to the Garda Ombudsman any matter that appears to the Garda Commissioner to indicate that the conduct of a member of garda personnel may have resulted in the death of, or serious harm to, a person</i></p> <p>The inclusion of a time frame for notification is a good addition, and the use of 'without delay' appears to be appropriate.</p>
<p>Head 165</p>	<p>Notification to Garda Ombudsman of incident of concern in relation to conduct of member of garda personnel</p> <p><i>(5)(ii) The Garda Commissioner shall be required to notify an incident of concern under subhead (-</i></p> <p><i>(ii) would not endanger the life or safety of any person who has given formation in confidence to a public body in relation to the enforcement or administration of the law</i></p> <p>Inclusion of the criteria for not notifying on the grounds that it would endanger the life or safety of any person who has given information in confidence to a public body in relation to the enforcement or</p>

	<p>administration of the law, may well remove incidents of concern raised by persons such as covert human intelligence sources in connection with their handling. The Inspectorate notes that subhead (6) provides that the Garda Commissioner is required to inform the Independent Examiner and Garda Ombudsman without delay when subhead 5 is invoked.</p>
<p>Head 166</p>	<p>Investigation of matters in the public interest <i>(5) The Policing and Community Safety Authority may refer any matter to the Garda Ombudsman that gives rise to a cause for concern that a member of garda personnel may have—</i> <i>(a) committed an offence, or</i> <i>(b) behaved in a manner that may have breached the standards of professional behaviour and which if proved would justify conduct Proceedings.</i></p> <p>The provision to allow the Policing and Community Safety Authority to refer any matter that gives cause for concern to the Garda Ombudsman is an important addition. This addresses a gap in the Inspectorate’s current legislation.</p>
<p>Head 168</p>	<p>Formal Investigation</p> <p>Barred list In England and Wales provision is made in certain circumstances for a finding of gross misconduct in relation to a former member of a police service to be recorded on a “barred list”. The effect of appearing on the barred list is exclusion from working in the policing field.</p> <p>The importance and use of a Barred List in In England and Wales is explained in the Inspectorate’s Countering the Threat of Internal Corruption Report (2021). This list applies to workforce members who are dismissed from a police service.</p> <p>In the UK, there is also a Police Advisory List for those who retire or resign from the police service during an investigation or before issues of conduct come to light.</p> <p>The Barred and Police Advisory Lists are managed by the UK College of Policing. In the absence of a professional body in Ireland, a recording system for any such findings should be introduced to retain this type of information. It is worth noting that ex-garda members can currently apply for the majority of positions within GSOC and will be able to apply for positions in the new Policing and Community Safety Authority.</p>
<p>Head 173e</p>	<p>Garda Ombudsman referral to the Director of Public Prosecutions <i>1(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.</i></p>

	<p>This subhead closes a gap in the current process whereby the investigation is effectively closed once a report is completed and sent to the DPP. As such, a request from the DPP for additional action, such as further statements creates a challenge as the case cannot effectively be re-opened.</p>
Head 177	<p>Provision of information to Garda Ombudsman by Garda Síochána</p> <p>This is an important provision as it strengthens the obligation on the Garda Commissioner to provide the Garda Ombudsman with such information or documents as the Garda Ombudsman may require for the purposes of, or in connection with, the exercise of his or her functions. The inclusion of “as soon as practicable” is an important addition.</p> <p>As highlighted in Head 119, the Inspectorate believes that a similar provision should be made for the Authority.</p>
Head 181	<p>Protocols</p> <p>While the head states that written protocols should be arranged as soon as practicable, it would be beneficial to put a time period on this, such as six or nine months after the passing of the Act.</p> <p><i>1(h) the sharing with each other of information (including evidence of offences) obtained by either the Garda Ombudsman or the Garda Commissioner.</i></p> <p>While this subhead addresses the issue of information, it does not explain what type of information this refers to. For example, it is not clear if it includes information and intelligence on corruption or suspected wrongdoing. This is an area that is also examined in the Inspectorate’s Countering the Threat of Internal Corruption report (2021).</p>
Head 188	<p>Power of Garda Ombudsman to enter into agreements with law enforcement agencies or other relevant persons or bodies outside the State</p> <p>This is a welcome provision that addresses a previous legislative gap that prevents GSOC from entering into agreements with police oversight bodies and law enforcement agencies outside the State in order to exchange information.</p>
Part 7 Reference	Observations and Suggestions
Head 195	<p>Functions of Examiner</p> <p><i>(1)(d) to examine whether the delivery of security services is to the highest levels of efficiency and effectiveness having regard to international standards.</i></p> <p>The General Scheme separates security services from policing services and the oversight arrangements will also be separated with the Independent Examiner having responsibility for oversight of security services and the Authority being responsible for oversight of policing services. There is not always such clear lines</p>

	<p>between those criminals and organised criminal networks involved in serious crime and other crimes that impact on communities. There are also overlaps in the policing tactics and policing powers that are used. For example, those who pose a threat to national security may also be involved in serious criminality that is covered by policing services</p> <p>It is important to ensure that there are no gaps in oversight between.</p> <p>While Head 115 allows for joint inspections with other statutory agencies, it unclear if the Authority can carry out joint inspections with the Examiner.</p>
<p>Heads 203, 204 and 205</p>	<p>Other Oversight Roles - 202 (2), 203 (2) and 204 (2)</p> <p>The Inspectorate notes that the Independent Examiner will also have an oversight role in relation to the operation of the provisions of the Interception of Postal Packets and Telecommunications Messages (Regulations) Act 1993, the operation of the provisions of the Criminal Justice (Surveillance) Act 2009 and the operation of the Communications (Retention of Data) Act 2011. While these powers are used to investigate crimes against the state, they are used on a daily basis in connection with the investigation of other crime, including serious and organised crime.</p> <p>The Inspectorate has previously examined the use of these types of powers and they will no doubt feature in future inspections conducted by the Authority. There is a need for clarity around the different oversight responsibilities in respect of these areas and policing activity associated with the various pieces of legislation.</p>
<p>Part 8 Reference</p>	<p>Observations and Suggestions</p>
<p>Head 222</p>	<p>Regulations relating to standards of professional Behaviour</p> <p><i>(1) The Minister may, after consulting with the Garda Commissioner and the Garda Síochána Ombudsman, and with the approval of the Government, make regulations prescribing the standards of professional behaviour applicable to members of garda personnel.</i></p> <p>The Inspectorate is of the view that the Authority should also be included as one of the bodies the Minister should consult with while making regulations under this subhead.</p>
<p>Head 229</p>	<p>(1) Sharing of information for the performance of functions</p> <p><i>1) For the performance of their respective functions under this Act and the regulations or any other enactment -</i></p> <p><i>(a) the Garda Commissioner,</i></p> <p><i>(b) the Policing and Community Safety Authority, and</i></p> <p><i>(c) the Office of the Garda Síochána Ombudsman</i></p> <p><i>may share information, including personal information, with each other in accordance with the law.</i></p>

	<p>The inspectorate welcomes the provision under this head to facilitate the Garda Commissioner, the Policing and Community Safety Authority, and the Office of the Garda Síochána Ombudsman to share information. This will support each of the bodies in expediently performing their respective functions.</p>
<p>Head 239</p>	<p>Amendment of Freedom of Information Act 2014 (C) (1) This head continues the exemption currently in place for the Inspectorate’s inspection function from the Freedom of Information Act 2014 insofar as it relates to records concerning an inspection or inquiry carried out by the Authority.</p> <p>This is a necessary provision that if it was not in place would impede the expedient carrying out of inspections.</p>

4. Conclusion

The Inspectorate welcomes the publication of the General Scheme. In order for the proposed new oversight arrangements to be effective it is critical that the inspection function remains an important part of the oversight architecture and this submission includes observations and suggestions to support the performance of the inspection function within the Authority., The Inspectorate appreciates the invitation to furnish a written submission to the Committee and hopes that it will be of assistance in its consideration of the Scheme.