First Report of the Working Group

on

Industrial Relations Structures

for

An Garda Síochána

28 July 2017
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1. Introduction

The Working Group on Industrial Relations Structures

1.1 During 2016, a number of issues arose regarding the pay and conditions of the Garda Síochána, which had the potential to lead to a damaging dispute. In the course of reaching an agreement to resolve these issues, a commitment was given in relation to providing access to the Workplace Relations Commission (WRC) and the Labour Court. It was also affirmed, as a matter of principle, that the Garda Associations would have direct access to future pay determination mechanisms to allow them participate on an equal basis with other public sector representative bodies. However, this commitment to providing access did not necessarily imply trade union status or the removal of constraints on engaging in industrial action.

1.2 The Working Group on Industrial Relations Structures for An Garda Síochána was established in early 2017 to consider how to give effect to the commitments made, and to advise the Minister in relation to the legislative and other changes that might be required. The Working Group seeks to identify any issues that might adversely affect the development and maintenance of stability in the conduct of industrial relations in the Garda Síochána during any period of transition, and to ensure a smooth well-managed transition for all stakeholders, including the WRC and the Labour Court. The Working Group recognises the importance of wide-ranging consultation in this regard and in particular the importance that must be attached to the views of stakeholders who will be most directly impacted by any recommendations; notable among whom are the Garda Associations.

1.3 The Working Group was convened under an independent chair, Mr. John Murphy, formerly Secretary General of the Department of Jobs, Enterprise and Innovation. In addition to the chair, it comprises representatives of the relevant Government Departments\(^1\), Garda management and the WRC\(^2\), with a remit to oversee and progress this body of work within the time frame identified by the Labour Court recommendations. The Terms of Reference of the Working Group, which are set out in full in Appendix A, stipulate that the Group must have particular regard to international experience and norms, the assessment of the European

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\(^1\) Department of Justice and Equality; Department of Jobs, Enterprise and Innovation; Department of Public Expenditure and Reform; Department of An Taoiseach; Department of Defence

\(^2\) The WRC input was confined primarily to Section 3, Paragraphs 5.7 and 6.1

1.4 This Report to the Minister from the Working Group deals with the matters set out in section 1 of the Terms of Reference, specifically how to define and implement the arrangements allowing access for the Garda Associations to the facilities of the Workplace Relations Commission and the Labour Court; the status of the Garda representative Associations under any new legislation, and any rules and procedures that might apply. While this indicates a broad range of issues, the Working Group has taken the view that the most important elements of its remit are concerned with

- Granting access to the Garda Associations to the Workplace Relations Commission and the Labour Court,
- The legislation required to support this (Heads of Bill),
- The matters for which access is required, and
- The implementation of interim measures to ensure the operation of appropriate industrial relations mechanisms pending completion of the legislative changes.

The Working Group is of the view that certain other issues, such as the status of the Garda Associations vis–a-vis trade unions, and the taking of industrial action by Garda members, require further intensive consideration, taking into account the views expressed in the submissions from the Garda Associations.

1.5 The Working Group recognises that there are further issues to be considered, including questions of the practical operation of industrial relations in the Garda Síochána, the roles of the relevant Ministers, and resourcing issues for the relevant dispute resolution bodies involved. These matters will be addressed in the second report to the Minister to issue in October 2017. The Garda Associations will be fully engaged with the Working Group in that phase of the work.
2. Current Industrial Relations Position

2.1. Representative Associations for the Garda Síochána

2.1.1 Four Associations, which were statutorily established under the Garda Acts, represent members of the Garda Síochána at different ranks in all matters affecting their welfare and efficiency (including pay, pensions and conditions of service) with the approval of the Minister. In terms of membership the largest of these Associations is the Garda Representative Association (GRA), followed by the Association of Garda Sergeants and Inspectors (AGSI), the Association of Garda Superintendents (AGS) and the Association of Garda Chief Superintendents (AGCS). Garda members at the rank of Assistant Commissioner and above do not have any representative association.

2.1.2 The central role of the Garda Síochána in the security apparatus of the State, both with regard to policing and national security, has been the basis for determining that some of the usual trade union rules and procedures are not appropriate to their representative Associations, in particular regarding access to the industrial relations and dispute resolution machinery which is available to other employees in both the public and private sectors. In addition, there is a prohibition on members of the Garda Síochána joining trade unions, and constraints on members taking industrial action under both the criminal law and the rules governing discipline (see Appendix B).

2.2. The Garda Conciliation and Arbitration (C&A) Scheme

2.2.1 The Garda C&A Scheme provides the current framework for the resolution of industrial relations issues. The Scheme covers issues such as pay, allowances, terms and conditions and other matters. It is similar to those operating in other areas of the public service including the Civil Service, the Defence Forces, and teaching. It provides for a Conciliation Council, an Arbitration Board and an Adjudicator and covers all ranks up to and including the rank of Chief Superintendent. Notwithstanding the role that the Scheme plays in resolving issues, in common with other C&A schemes its existence does not imply that the Government have surrendered or can surrender their liberty of action in the exercise of their constitutional authority and the discharge of their responsibilities in the public interest.

2.2.2 Under the C&A Scheme matters can be raised at the Conciliation Council by either side. The following matters are conciliable (can go to conciliation) under the Scheme:
- Claims relating to pay and allowances and other emoluments whether in cash or in kind;
- Claims relating to hours of duty;
- Claims in relation to loss of earnings;
- Standards of accommodation officially provided;
- Principles governing the provision and allocation of living accommodation officially provided;
- Principles governing superannuation,
- Principles governing the grant of annual, sick and special leave;
- Principles governing recruitment;
- Principles governing promotion;
- Principles governing discipline;
- Principles governing transfers;
- Suggestions of general application for promoting the efficiency of the Force.

Where possible, these matters are agreed through the process of conciliation, and implemented jointly. In common with other C&A schemes, there are remedies for any failure to implement an agreed decision.

2.2.3 In a restricted range of issues, where agreement cannot be reached, an arbitration process is invoked. Matters that are arbitrable (can go to arbitration) are:

- Claims for adjustments of rates of pay and allowances (including claims for new allowances);
- Claims in regard to periods of annual leave and sick leave;
- Claims in regard to total weekly hours of work;
- Claims in regard to overtime; and
- Claims for compensation for loss of earnings.

Notably, claims affecting individual members are outside the scope of the Scheme as are operational matters.

2.2.4 In the case of negotiations on recent public service agreements (including the Haddington Road and Lansdowne Road Agreements) which were negotiated with the Public Services Committee of the Irish Congress of Trade Unions (ICTU), contemporaneous negotiations were conducted with non-ICTU affiliated unions and representative bodies including the Garda
representative Associations. Furthermore, in the case of the most recent Public Service Stability Agreement 2018-2020 there was full parity of esteem accorded to the non-ICTU Associations. In the context of recent collective agreements which include provisions prohibiting any cost increasing claims for their duration and the Financial Emergency in the Public Interests (FEMPI) Acts, the C&A Schemes generally have been employed to a significantly reduced extent.
3. Employee Representation – Role of the WRC and the Labour Court

3.1 The Workplace Relations Commission (WRC)

3.1.1 The main functions of the WRC are to:

- Promote the improvement of workplace relations and the maintenance of good workplace relations,
- Promote and encourage compliance with relevant employment legislation,
- Provide guidance in relation to compliance with Codes of Practice,
- Conduct reviews of, and monitor developments in, workplace relations generally,
- Conduct or commission relevant research and provide advice, information and the findings of research to Joint Labour Committees and Joint Industrial Councils,
- Advise the Minister for Jobs, Enterprise and Innovation in relation to the application of, and compliance with, relevant legislation.

Within this framework, the Commission’s core services include the provision of mediation, conciliation, facilitation and advisory services, adjudication on complaints and disputes, the monitoring of employment conditions to ensure the compliance and enforcement of employment rights legislation, and the provision of information.

3.1.2 The WRC has responsibility for a range of the matters most important of which in the current context is perhaps “promoting the improvement of workplace relations, and maintenance of good workplace relations”. There are no specific restrictions on what matters can be brought before the WRC. Access to the WRC currently is through a general legislative provision that provides that ‘the Commission may at the request of one or more parties to a trade dispute or on its own initiative offer the parties its appropriate services with a view to bringing about a settlement’. 3

3.1.3 Services provided by the WRC in this regard include:

3 25(2) of the Industrial Relations Act 1990.
• **Advisory Service:** The advisory service provides advice and assistance on workplace relations in the workplace to employers, employees and their representatives. It helps employers and employees to develop positive working relationships and mechanisms to solve problems.

• **Conciliation Service:** The focus of the conciliation service is to provide an impartial, timely and effective conciliation service operating to a continually high standard in both the public and private sector. Conciliation is a voluntary process in which a professional conciliation officer facilitates employers and employees and/or their representatives to resolve workplace issues when their own efforts have not succeeded. The conciliation officer acts as an impartial facilitator in discussions between the parties. The primary value and function of the services is that it is available to provide a high quality resource at the appropriate moment in any given dispute situation. In 2016 some 86% of the cases referred to conciliation were settled.

• **Mediation Service:** The WRC provides a mediation service for the resolution of complaints referred under employment rights legislation thus eliminating the need for the parties to have their complaint adjudicated. Mediation is a form of alternative dispute resolution in which a neutral third person helps the parties achieve a voluntary resolution of a complaint.

• **Adjudication Service:** The adjudication service investigates disputes, grievances and claims that individuals or small groups of workers make under employment legislation or industrial relations legislation. Adjudication decisions may be appealed to the Labour Court.

• **Inspection Service:** The Workplace Relations Commission (WRC) also has responsibility for promoting and encouraging compliance with relevant employment legislation. The inspection service carries out inspections, examinations or investigations or workplaces for the purposes of monitoring and enforcing compliance with employment legislation. The identity of the complainant is not divulged to the employer unless the complainant has given his/her consent to do so.
3.2 The Labour Court

3.2.1 The Labour Court operates as an industrial relations tribunal, hearing both sides in a case and then issuing a Recommendation (or Determination/Decision/Order, depending on the type of case) setting out its opinion on the dispute and the terms on which it should be settled. The mission statement of the Labour Court is "To find a basis for real and substantial agreement through the provision of fast, fair, informal and inexpensive arrangements for the adjudication and resolution of trade disputes". The Labour Court has sole appellate jurisdiction in all disputes under employment rights enactments. The Court's determinations under the Employment Rights enactments are legally binding.

3.2.2 Recommendations made by the Court concerning the investigation of disputes under the Industrial Relations Acts 1946–2015 are not binding on the parties concerned, however, the parties are expected to give serious consideration to the Court's Recommendation. Ultimately, however, responsibility for the settlement of a dispute rests with the parties. It should be noted that, under Section 20 of the Industrial Relations Act 1969 workers or Trade Unions, when asking the Court to investigate a trade dispute, can undertake in advance to accept the decision of the Court.

3.3 Individual Garda Member Access to the WRC/Labour Court

3.3.1 It should be noted that members of the Garda Síochána currently have individual access to the WRC for a wide range of rights-based matters related to terms of employment, maternity protection, adoptive leave, carer’s leave, parental leave, payment of wages and safety, health and welfare at work. Members also have access to the WRC in cases of harassment and the Garda Síochána utilises the WRC mediation service when members agree, as part of its Bullying and Harassment Policy.

3.4 Garda Association Access to the WRC/Labour Court

The long-standing position of the Garda Associations is that their access to pay determination arrangements has been insufficient to allow them to articulate the case for the pay and conditions of members. The GRA and AGSI were allowed access to the WRC and Labour

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Court, as referred to elsewhere in this report, as an ad-hoc arrangement to resolve the 2016 dispute. There is also ongoing engagement in the WRC to resolve certain specific issues arising from that arrangement.

The Garda Associations had access to the WRC on the same basis as other unions and associations in the course of the 2017 pay negotiations.
4. Consultation with Stakeholders

4.1 Consultation Process

As was set out previously in this report (Section 1.2), the Working Group recognises the importance that must be attached to the views of the stakeholders who will be most directly impacted by its recommendations, and in particular the Garda Associations. The Working Group entered into a consultation process with the four Associations during the course of which each Association was invited to meet the Group to engage in discussions on the issues and to apprise the Group of their concerns and views on the issues at hand. The Working Group held consultation meetings with each of the Garda Associations during March 2017. Following this a second stage of consultation was commenced with the Working Group seeking written submissions from the Associations. This process was informed by a comprehensive consultation document (See Appendix D) setting out a range of key issues which the Group considered were of particular importance. The views expressed in these submissions, having been given full consideration by the Working Group, were amalgamated into this report.

Unfortunately, due to competing demands on the time of the parties involved, including the national pay talks, there were some delays in receiving written submissions from the Associations. Taking into account the comprehensive and wide-ranging views of the Associations, in some cases the complexity of the issues and the variety of positions taken has meant that further discussions are needed to arrive at a conclusive position on the submissions made. Where this is the case, it has been noted accordingly in the recommendations in Section 6. To the greatest extent possible, the report makes firm and unqualified recommendations with regard to the priority issues identified in Section 1.4 relating to allowing access to the WRC and the Labour Court, and putting interim IR structures in place.

The full text of the submissions received are set out in Appendix F. The main points of the submissions have been set out below and categorised to reflect the following headings:

- IR Structures (WRC, Labour Court and Collective Bargaining);
- Trade Union Status;
- Limitations on the Taking of Industrial Action;
- Internal Dispute Resolution Mechanisms;
- Pay Determination Mechanisms.
While every effort has been made to ensure that all significant issues have been included in the summations at Section 4.2 below, it is important to note that any references must be considered in the context of the full submissions included at Appendix F. Where issues have been raised by the Associations in their submissions that do not fall within the remit of the Working Group they are included in the summaries but are not reflected elsewhere in the report.

In addition to the Garda Associations, the consultation exercise extended to the Policing Authority and the Irish Congress of Trade Unions. These organisations did not make written submissions. Rather, they were invited to express their views in meetings with the chair and members of the Working Group. These views are not summarised separately in this Section, but are included throughout the report where appropriate and relevant.

4.2 The Garda Representative Association
The Garda Representative Association made a comprehensive submission, including covering some issues which may be dealt with in other phases of the work, or which fall outside the remit of the Working Group. The full text of their submission is available in Appendix F1.

4.2.1 GRA Submission - IR Structures (WRC, Labour Court and Collective Bargaining):
- Access to the WRC and Labour Court
  - Garda representative bodies should have access to collective bargaining institutions and processes on a par with trade unions;
  - Full and unrestricted access to the WRC and Labour Court for all normal IR issues, but not including disciplinary matters (except those linked to alleged discrimination under the Employment Equality Acts);
  - GRA accepts that Garda operational and policy matters are the preserve of the Department and of Garda management;
  - GRA is open (in certain cases) to accepting Labour Court decisions as binding on all parties.

- Collective Bargaining
  - The ability to organise and bargain collectively is asserted as a right;
  - Seeking full and equal access to national public sector pay negotiations;
The GRA suggests that the Working Group should consider how to accord collective bargaining rights to Garda Associations pending the introduction of relevant legislation, and ways to mitigate delays in implementation of a changed IR framework.

- **Registered Employment Agreement**
  - A Registered Employment Agreement (ref. Appendix 1 Horgan Report) setting out the approach to be taken by both sides in the event of a dispute is an appropriate way to provide for voluntary limitations of industrial action;
  - This would operate within strict criteria ensuring fairness and an ability to deal with all circumstances;
  - In order for the agreement to be the basis of voluntary restrictions on industrial action, it would need to be fully binding on both sides.

- **Interim Measures**
  - Bridging mechanisms to be put in place to ensure that Associations have access to WRC and Labour Court pending legislation;
  - A bridging mechanism to be also put in place to allow access in relation to national public sector pay negotiations.

- **Excepted Body Status**
  Garda Associations are not currently ‘excepted bodies’ as per the 1941 Trade Union Act. The GRA wish this to be addressed, by legislation or Statutory Instrument, to ensure the Associations have full rights to engage in collective bargaining.

### 4.2.2 GRA Submission - Trade Union Status:

- The option of trade union status should be available to Garda members;
- There should be no impediment to Garda Associations or trade unions affiliating to ICTU or similar confederated bodies;
- Recognition by GRA that the transition to trade union status would be complex and require careful consideration;
- Costs associated with change to trade union status should be borne by the State;
• If the Associations retain their current status and do not change into trade unions then the requirements in relation to secret balloting, etc. and protection under the Industrial Relations Acts in the event of industrial action should be extended to them by regulation and legislation, as appropriate.

4.2.3  **GRA Submission - Limitations on the Taking of Industrial Action:**

• The GRA recognises that strikes and industrial action are undesirable and has no desire to see industrial relations in An Garda Síochána based on a recurring need to threaten or resort to industrial action;
• The “normalisation of industrial relations” (per Horgan report) must include an entitlement to engage in industrial action, including strikes. To engage in industrial action on a par with other workers is asserted as a right;
• In return for voluntary limitations on industrial action there is a requirement to introduce robust agreed measures that would make industrial action unnecessary:
  o An agreed dispute resolution mechanism;
  o Access to the WRC and Labour Court;
  o Honouring existing agreements and maintenance of established practice;
  o Acceptance by all parties of Labour Court recommendations;
  o Access to national pay negotiations,
  o Establishment of a dedicated Garda pay review body.
• Limitations on industrial action would operate as long as the agreed measures are in operation;
• Current legislative restrictions on the taking of industrial action by Garda members should be removed.

4.2.4  **GRA Submission - Internal Dispute Resolution Mechanisms:**

• The current Garda C&A scheme (Conciliation Council) could be reformed or adapted to serve as a mechanism for resolving workplace issues. This has the advantage of familiarity, and is the preferred option subject to identified amendments being agreed and implemented;
• A number of desirable changes have been identified, including removing restrictions on the IR matters that can be dealt with in this forum;
• Existing Conciliation Council agreements should be given formal recognition by being registered with the Labour Court;

• In the event that agreement on amendments to the C&A scheme cannot be reached, the introduction of a Garda specific Joint Industrial Council (JIC), similar to the model used in some parts of the health sector, could be agreed so as to provide the necessary functionality through an alternative mechanism;

• Current consultation provisions (Memorandum of Understanding & Joint Protocol for Consultation and Dispute Resolution) should remain in place as part of the internal mechanisms;

4.2.5 GRA Submission - Pay Determination Mechanisms:

• A Garda Remuneration Review Body (GRRB) should be established, with a remit to conduct a five-yearly review of pay and conditions and to address any issues, including the impact of Labour Court recommendations;

• This pay body would take account of the special and unique nature of police work in making its determinations.

4.2.6 GRA Submission - Matters outside the Remit of this Report:

• European Working Time Directive (EWTD)

  The GRA are seeking a mechanism to give effect to the application of the European Working Time Directive as it applies to An Garda Síochána. This includes an amendment to the Organisation of Working Time Act 1997 to include An Garda Síochána. Labour Court approval of a Working Time Agreement (WTA) is a requirement. It is proposed that the current WTA be amended through direct negotiations under the ‘Westmanstown’ process.

4.3 Association of Garda Sergeants and Inspectors

The Association of Garda Sergeants and Inspectors in making their submission, raised again the issue of what it regards as its exclusion from the Working Group. The Association reiterated its position that it should be invited to sit as a full partner on the Group. While this matter has been ventilated extensively in other discussions, the Working Group welcomes the full participation of AGSI in the consultation process leading to the conclusion of this report. This included meetings with the Group, consideration of the consultation paper (see Appendix
C) and providing the comprehensive written submission summarised below and set out in full in Appendix F2. Further engagement between the Working Group and all the Garda Associations will take place during the next phase of the work.

4.3.1 AGSI Submission - IR Structures (WRC, Labour Court and Collective Bargaining):
- Access to the WRC and Labour Court
  - Unrestricted access to the WRC (including adjudication services) and Labour Court, so that members enjoy the same employment rights as all other workers in the State;
  - Access to include in relation to all employment legislation, and matters concerning pay, emoluments, allowances and pensions;
  - AGSI considers that all matters going to conciliation in the WRC should be capable of being referred to the Labour Court;
  - AGSI considers that further debate is required before accepting Labour Court decisions as binding on all parties. The Code of Practice on Dispute Resolution (including Disputes in Essential Services) SI 1/1992 could be considered in this regard.
- Collective Bargaining
  - AGSI seek formal recognition of the right to participate directly in public sector pay negotiations;
- Excepted Body Status
AGSI considers that developing the ‘excepted body’ status in concept is a matter for engagement between the Working Group and the Association.

4.3.2 AGSI Submission - Trade Union Status:
- AGSI considers that the Working Group should enter into discussions with the Association on the aspects of trade union law that might be inappropriate or inimical to effective policing, and in relation to other aspects of this issue.

4.3.3 AGSI Submission - Limitations on the Taking of Industrial Action:
- AGSI contends that Garda members should have the same industrial relations entitlements (to take industrial action) as all other workers;
- AGSI seeks implementation of the EuroCOP decision.
4.3.4 AGSI Submission - Internal Dispute Resolution Mechanisms:

- Current Joint Protocol for Consultation and Dispute Resolution to be reviewed once access to WRC and Labour Court is in place;
- AGSI are open to discussing and agreeing the internal processes required to be in place in meetings at the Working Group.
- AGSI consider that the current Garda C&A scheme (Conciliation Council) has effectively been suspended since 2009 due to Government Decisions and the FEMPI legislation;
- AGSI are critical of the C&A scheme as currently constituted and number of desirable changes have been identified, including speeding up the process for dealing with claims.

4.4 Association of Garda Superintendents

The full text of the submission by the Association of Garda Superintendents is included in Appendix F3. In their submission, the AGS set out the views as follows:

AGS Submission - IR Structures (WRC, Labour Court and Collective Bargaining):
Full access to the WRC and Labour Court should be available where required. Internal mechanisms should ensure that issues are resolved early to reduce the requirement. For matters not suitable to the WRC, a dedicated expert group could be constituted.

AGS Submission - Trade Union Status:
Garda Association status should be maintained, as trade union status could conflicts with policing duties (e.g. policing of demonstrations by affiliated unions).

AGS Submission - Internal Dispute Resolution Mechanisms:
- Robust and timely mechanisms are required to deal with industrial relations issues, including
  - Internal Garda partnership forum,
  - Escalation to forum such as C&A Council, and further to WRC/Labour Court if required.
- The C&A scheme should be maintained but reviewed to establish timelines for resolution of issues.
AGS Submission - Pay Determination Mechanisms.
Pay reviews should take place every 2-3 years supported by an expert committee as proposed during Horgan review.

4.5 Association of Garda Chief Superintendents
The full text of the submission by the Association of Garda Chief Superintendents is included in Appendix F4. In their submission, the AGCS set out the views as follows:

AGCS Submission - IR Structures (WRC, Labour Court and Collective Bargaining):
Access to the Workplace Relations Commission as a last resort should be included with an internal dispute resolution mechanism with precise timeframes set out for adherence of all parties involved.

AGCS Submission - Trade Union Status:
Due to the numbers in the Association, remaining as a Staff Association is the preferred option of the AGCS.

AGCS Submission - Internal Dispute Resolution Mechanisms:
- It is important to have robust internal mechanisms to deal with dispute resolutions within An Garda Síochána;
- This process should also contain mechanisms to advance such disputes if not resolved to the Conciliation and Arbitration Council with an independent Chairman.
5. Matters for Consideration

5.1. Underlying Position

All the matters contained in this Report must be considered in the light of a number of developments in recent years that are integral to how the Garda Associations engage in the area of industrial relations and in current and future negotiations on pay and conditions. These include

- The impact on Garda members of national pay agreements in the public service including the Croke Park Agreement, the Haddington Road Agreement, the Lansdowne Road Agreement and the recently negotiated extension to these agreements, the draft Public Service Stability Agreement 2018 – 2020.
- The Assessment of the European Committee of Social Rights in the case of European Confederation of Police (EuroCOP) – v- Ireland; and further international best practice in this area,
- The granting of ad-hoc access to the WRC and Labour Court, mirroring the normal trade union processes, in an effort to resolve the 2016 dispute; and
- The recommendations in the Horgan Report.

5.1.1 Public Service Agreements – Croke Park, HRA and LRA

5.1.1.1 It is a matter of record that the Garda Associations did not readily accept what they have categorised as their effective exclusion from the negotiating table for the three national pay agreements negotiated since 2009. In the words of the Garda Representative Association “(T)he experience of being corralled into a side room and presented with an agreed deal (concluded with the ICTU-affiliated unions in an adjoining room) was neither edifying nor equitable”. However, it should be noted that the Associations did have significant input into elements of the agreements, in particular the Haddington Road Agreement, where the negotiation of Garda-specific terms included in an appendix to the agreement ameliorated the

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5 EuroCOP: The European Committee of Social Rights found Ireland to be in breach of the European Social Charter. (The findings of the Committee are not binding on Member States). The finding referred to the restricted access of police representative Associations into pay agreement discussions; the prohibition against Garda representative Associations joining other national employee’s Associations; and the absolute prohibition against the right to strike of members of the Garda Síochána. Regarding the right to strike, the Committee determined that the State had not demonstrated a pressing social need for legislation (Garda Síochána Act 2005) which imposes an absolute prohibition on the exercise of the right to strike, when it could have established restrictions short of an absolute prohibition on this right.

6 The Case for the Gardai Clearly Stated, S6.4 Dec 2015
general terms of the HRA for Garda members and facilitated the application of conditions specific to the Garda Sector.

5.1.1.2 The carrying out of national negotiations on behalf of public servants in national pay talks has been seen by the Garda Associations as a matter for the Irish Congress of Trade Unions (ICTU) and specifically the Public Services Committee of ICTU. The Garda Associations are effectively precluded from engaging with, or becoming Members of, ICTU due to legislative constraints set out in Section 18 of the Garda Síochána Act 2005.

In the context of such national pay negotiations, the Associations have felt that they often have little option but to accept whatever deal is agreed between ICTU and the management side. However, it should be noted that this is often effectively the position also occupied by the smaller trade unions affiliated to ICTU.

In terms of Garda Associations associating with a body outside the Garda Síochána, such as ICTU, while a general prohibition as set out in Section 18 of the 2005 Act is the default position, it is important to note that the Minister for Justice and Equality may, notwithstanding this, authorise an association with an outside body and in doing so may specify conditions or restrictions in relation to such an authorisation.

5.1.1.3 In advance of the publication of the Horgan Report in December 2016 the Government affirmed, as a matter of principle, that the Garda Associations would have direct access to future pay determination mechanisms and to participate on an equal basis with other public sector representative bodies. This affirmation has already seen the Associations engaging with the Commission on Public Service Pay and playing a full role in the central pay negotiations that followed publication of the Commission’s report.

5.1.1.4 The Garda Associations have collectively confirmed in the course of the consultation process that they expect full access to current and future pay negotiation processes on an equal standing with other public service unions and associations, and that this entitlement should be formally recognised.
5.1.2 The EuroCOP Case

5.1.2.1 The European Confederation of Police (EuroCOP) took a case\(^7\) to the European Committee of Social Rights alleging Ireland was in breach of the European Social Charter by not allowing the Garda representative Associations full trade union rights. The case was argued that, in particular, the Garda were prohibited from establishing trade unions and from affiliating with national employees’ organisations, had insufficient access to pay agreement discussions, were denied the right to take collective action, and were denied access to the Workplace Relations Commission and the Labour Court.

In a decision published in May 2014, the Committee came to four separate conclusions:

- That there is no prohibition on the establishment of trade unions (the Garda Associations filling that role);
- That there is a breach of the Charter in that Garda representative Associations are prohibited from joining national employee organisations (e.g. ICTU);
- That there is a breach of the Charter in that Garda representative Associations have restricted access to pay negotiations;
- That there is a breach of the Charter in that Garda representative Associations are subject to a prohibition of the right to strike.

In relation to the prohibition from striking, Article 6(4) of the European Social Charter states that “(I)t is understood that each party may…regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified…” The Committee noted that while the right of the police and other public officials to engage in collective action may be legitimately restricted, that (Ireland) had not justified that “the legitimate purpose of maintaining national security may not be achieved by establishing restrictions on the exercise of the right to strike…rather than by imposing an absolute prohibition” (Decision Par 209).

5.1.2.2 The ability of Member States to legitimately restrict (but not deny) the right of police to organise and take collective action was confirmed in a subsequent decision of the European Committee of Social Rights\(^8\) where it determined that “…with regard to police forces, if the

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\(^7\) European Confederation of Police (EuroCOP) –v- Ireland Complaint No 83/2012

\(^8\) Conseil Européen des Syndicats de Police (CESP) –v- France 101/2013 Par 62
right to organise may be restricted in accordance with Article G of the Charter, it may not be completely denied...Members of police forces must be free to form or join genuine organisations for the protection of their material and moral interests and [...] such organisations must be able to benefit from most trade union prerogatives...”.

In a dissenting opinion in the EuroCOP case, three of the Committee members state that “a statutory prohibition of the right to strike for police personnel under such circumstances (public security) constitutes a proportionate means to guarantee their service is fully operational at all times”9. In coming to this conclusion they refer to the 2008 ECHR judgement in Demir & Baykara –v- Turkey10, in which the court noted in paragraph 38 of the judgement that “…workers without distinction whatsoever should have the right to form and join organisations of their own choosing and that the only admissible exception under the Convention (of the International Labour Organisation) concerns the armed forces and the police”.

The ECHR further noted (paragraph 46) the Council of Europe opinion that “Public officials should, in principle, enjoy the same rights as all citizens. However, the exercise of these rights may be regulated by law or through collective agreement in order to make it compatible with their public duties. Their rights, particularly political and trade union rights, should only be lawfully restricted in so far as it is necessary for the proper exercise of their public functions”.

5.1.2.3 The GRA have confirmed, in the course of the consultation process, their view that the ability to organise and bargain collectively is a fundamental right. AGSI contend that Garda members should have the same industrial relations entitlements as all other workers, and want the processes in this regard to fully reflect all aspects of the EuroCOP decision.

5.1.2.4 Although the decision in the EuroCOP case is not binding on Ireland, the then Minister made it clear in the State's formal response and in other public statements the commitment to seeking solutions to these issues which respect the European Social Charter, including ensuring that the Garda representative Associations would have full inclusion in any negotiations on the continuation of the Lansdowne Road Agreement.

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9 EuroCOP v Ireland - Dissenting Opinion of Monica Schlachter, Joined by Birgitta Nyström and Marcin Wujczyk
10 Case of Demir and Baykara v Turkey, European Court of Human Rights, Application 34503/97
5.1.3 **International Practice**

5.1.3.1 At an international level, particularly among common law jurisdictions, such as the UK, New Zealand and Australia it is the norm to have some form of restriction on the right of members of law enforcement to engage in industrial action. The restrictions and the alternative dispute resolutions mechanisms in place vary depending on the jurisdiction in question.

5.1.3.2 In New Zealand, members of the police, who are represented by the New Zealand Police Association, are prohibited by law\(^{11}\) from engaging in strike action. Industrial relations (IR) between the police and the State, particularly pay and conditions, are negotiated via the specific IR mechanism set out in the 2008 Police Act rather than the general state IR mechanisms. The current IR procedure works on the basis of a ‘final offer’, where one party wins and one loses, because the arbitration panel has to select one party’s position in its entirety. (See Schedule 2 of the 2008 Act). This is designed to promote negotiated settlements by increasing the risks to the parties of not reaching agreement.

5.1.3.3 Australia on the other hand while also restricting the right of law enforcement to take industrial action, grants access to the general state IR mechanisms for the purpose of resolving disputes concerning pay and conditions. However, this system of dispute resolution is complicated in that it comprises an amalgam of federal and state IR legislation in addition to the Police Acts and associated instruments, and various related employment statutes.

5.1.3.4 The UK, like Australia and New Zealand, prohibits members of the police from becoming members of a trade union which can take strike action\(^{12}\). The prohibition on the right of the police to strike dates back to the early 20\(^{th}\) century. The Police in the UK, similar to New Zealand and Ireland, are represented by Associations rather than trade unions. Currently negotiations on pay and conditions and related matters for police in Wales, England and Northern Ireland are conducted through the Police Remuneration Review Body (PRRB) which became active in 2014. The PRRB is an advisory non-departmental public body, sponsored by the Home Office which provides independent advice to the government of the UK on pay and conditions for police officers at or below the rank of chief superintendent in England, Wales and Northern Ireland.

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\(^{11}\) Police Act 2008 section 69

\(^{12}\) Section 64 of the 1996 Police Act
While there are similarities in the legal status of policing between the UK and Ireland, the administrative structure and the pay architecture in the UK public sector are significantly more fragmented than in Ireland. This is in part due to the size of the public sector in the UK, which makes it necessary to adopt sectoral approaches – there are currently in excess of 150,000 police officers in the UK, spread across 48 individual forces.

The PRRB has a broad remit to provide independent recommendations on issues within its terms of reference, straying beyond the area of remuneration into the hours of duty, leave, clothing and equipment. These terms of reference are set out in Appendix D for reference. In reaching its recommendations, which must be accepted by Government before being implemented, the PRRB must have regard to a number of considerations including:
1. the particular frontline role and nature of the office of constable in British policing
2. the funds available to the Home Office, as set out in the Government’s departmental expenditure limits, and the representations of police and crime commissioners and the Northern Ireland Policing Board in respect of local funding issues

The two most recent pay determinations made by the PRRB were 1% in 2015 and 1% in 2016. These are in line with the general round increases in the UK public sector. As an independent body the advice of the PRRB has been accepted by both Government and the UK Police Associations.

5.1.3.5 AGSI have, in the course of the consultation process, suggested that the ongoing review of the Canadian policing model and proposed changes should also be examined.

5.1.4 The WRC/Labour Court Intervention
The Minister for Jobs, Enterprise and Innovation requested that the services of the Workplace Relations Commission and the Labour Court be utilised, on an ad-hoc basis, to assist in the resolution of a dispute involving the GRA and AGSI in An Garda Síochána in 2016. This intervention mirrored how the WRC and Labour Court would operate in relation to a dispute involving trade unions with full negotiation rights. The Labour Court issued a recommendation on 3 November 2016 which was accepted in resolution of the dispute, although not all matters were finalised at that time. Pending the development of permanent structures for ongoing access to the WRC and the Labour Court, and the introduction of the required legislation, the
ad-hoc access arrangements referred to above are set to continue, but only in relation to matters arising from the Labour Court recommendations. The recommendation also addressed the issue of ongoing access to the WRC and Labour Court, suggesting that this should be addressed through a process (this working group) and the introduction of legislation during 2017. The Labour Court further noted the agreement of the parties to the Working Group addressing issues of future pay determination.

5.1.5 The Horgan Report

5.1.5.1 The Haddington Road Agreement provided for a wide-ranging review of An Garda Síochána. This was ultimately carried out in part by the Garda Inspectorate and in part by a nominated independent chair – initially Ray McGee, and then subsequently John Horgan. The review ultimately completed by John Horgan in December 2016 focussed on two issues:

- The remuneration and conditions of service of members of An Garda Síochána including an evaluation of annualised hours/shift pay arrangements; and
- The appropriate structures and mechanism for the future resolution of matters relating to pay, industrial relations and attendant matters.

In stating an intention to ‘bring the structures and mechanisms in AGS into line with modern norms and best practice insofar as they are appropriate, and no further” the Horgan Report, among other matters, recommended that members of An Garda Síochána should have the right to join independent trade unions to engage in collective bargaining with Garda management, and that the GRA and AGSI should reconstitute as registered trade unions with the assistance of ICTU. However, the report recognised that this approach would allow for the taking of strike action by Garda members, while simultaneously holding the view that “strikes should not happen in the police force, especially as…the national security service is part of the police service”13.

5.1.5.2 The Horgan Report sought to address this contradiction by suggesting a procedure for resolving all disputes in a ‘fair manner’ together with a sanction of a loss of five years of pension accrual for any Garda member who engaged in industrial action. This pension measure was in lieu of legal and criminal sanctions which, it was considered, Garda members would not implement against colleagues taking industrial action. Having considered the matter

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carefully, the Working Group has formed the view that there would be significant difficulties in implementing a sanction of this nature. Pension rights are regarded as property rights, both in European law (Article 1 Protocol 1 of the European Convention on Human Rights) and in Irish Law (Cox v Ireland, 199114). There are also a number of different pension scheme rules and retirement criteria applying to serving Gardaí recruited variously prior to 1995, between 1995 and 2003, from 2004 to 2012, and from 2013 on. Taken together, these raise reasonable doubts as to whether a sanction intended to affect pension rights could be crafted in such a way as to be legally enforceable. In addition, the operation of the ‘fast-accrual’ pension for those recruited prior to 1 Jan 2013 is such that additional pension rights do not accrue after 30 years’ service, and as such the sanction might be legitimately avoided by Officers falling within that category.

In advance of the publication of the Horgan Report in December 2016 the Minister gave a commitment to provide access to the WRC/Labour Court and also to affirm, as a matter of principle, that the Garda Associations would have direct access to future pay determination mechanisms and to participate on an equal basis with other public sector representative bodies.

5.2 Status of Garda Associations

5.2.1 As has been noted in Section 2 and elsewhere, the Garda Associations are set up under legislation which sets out in some detail how they operate as staff representative bodies. The Associations are funded by the State, and operate within the confines of strict constraints on members joining trade unions and taking industrial action (which have been characterised as an effective prohibition on strike action). The Garda Associations have traditionally served both their members and the State by engaging in a professional manner with Garda and Departmental management through the industrial relations processes which are open to them. Issues relating to Garda pay and conditions are dealt with through the Conciliation and Arbitration Scheme. The WRC and the Labour Court, while they are new forums in which to engage, are extensions of the existing industrial relations machinery.

5.2.2 Trade Unions have a number of legal rights and obligations that distinguish them from the Garda Associations. Some of these (such as the right to deal in property or the obligation

14 Cox v. Ireland and others, 368P/1990, Supreme Court 11 July 1991
to file accounts) are incidental to the matters at hand and will not be addressed in this report. Equally it is assumed that, whatever the outcome of this process, the current Garda Associations will maintain the right to negotiate on behalf of their members so questions regarding registration as Trade Unions and obtaining negotiation licences, while important in themselves, are not dealt with in this Section.

5.2.3 The Terms of Reference of this Working Group are grounded in the Government Decision to provide the Garda Associations with access to the State industrial relations machinery. Therefore, at a minimum, the status and nature of the Associations will have to be able to facilitate this. There are two distinct routes which can allow the required levels of access. One is to remake the Associations as trade unions within the meaning of the Trade Union Acts, with the rights and responsibilities of that status. As full trade unions they would (subject to licence, etc.) have the right to negotiate freely in relation to terms and conditions and to withdraw labour in support of claims where appropriate, although there are strict rules regarding balloting for such industrial action.

The second option is to recognise the unique position of the Garda Síochána in the State by maintaining the Associations as statutory bodies established by primary legislation passed by the Oireachtas to bargain collectively on behalf of their members (this also accommodates State funding, whereas trade unions are self-funding, relying on member contributions for their activities and outgoings) but making the necessary changes, legislative and otherwise, to ensure access to the WRC and Labour Court as appropriate, and otherwise reflect the IR landscape applying to other public service trade unions and staff associations.

Having regard to the ‘ad-hoc’ arrangement which allowed and allows the representative bodies access to the Labour Court in relation to the 2016 dispute, it is clear that there can be no simple return to the status-quo ante when all the issues currently before the Labour Court are resolved. Taking account of their functional operation, this report is concerned with the ability of the Associations to

- represent their members in all matters, including pay and conditions;
- access the industrial relations machinery of the State, in particular the WRC and the Labour Court.
5.2.4 An important question, therefore, in relation to the status of the Garda Associations is whether it is necessary or desirable to effect a complete change in the structure, constitution and operation of the Associations – for example, by reconstituting them as Trade Unions - in order to meet the needs and expectations of Garda members, or whether those needs and expectations can be met by taking a more nuanced approach, in which the existing structures, protocols and operating procedures are re-purposed as necessary.

5.2.5 The Garda Associations, in the course of the consultation process, have expressed widely differing views in relation to trade union status. The AGS and AGCS, representing Superintendents and Chief Superintendents, have indicated their preference for retaining their current status. This is based partly on the potential for conflicts of interest in situations such as the policing of demonstrations involving other trade unions, and partly on the small numbers of members in these Associations - the Working Group notes that Section 2(1)(b) of the 1971 Trade Union Act restricts the granting of a negotiation licence to bodies with a minimum of 1,000 members.

AGSI has suggested that their Association is entitled to pursue full trade union status, but that this is a matter on which full consultation should take place prior to any decision being taken. They have indicated their willingness to enter into discussions on the matter, particularly in relation to the aspects of trade union legislation that might impact on effective policing.

The GRA have expressed the view that, while trade union status should be open to Garda members, representation rights for Garda ranks should remain with the current Association, however it is constituted. They also consider that affiliation to ICTU or similar bodies should be an option for Garda Associations and/or trade unions. The GRA accepts that the complexities of any such transitions would require careful consideration, and in any event will entail changes to the operational structure of the Association.

5.2.5 ICTU have expressed the view that in order for the Garda Associations to benefit from the rights normally accruing to trade unions (including access to the WRC/Labour Court and legal protections in relation to industrial action) they will need to become trade unions and be subject to the relevant rules and legislation, and in particular the 1990 Industrial Relations Act.

5.3 Governance, Rules and Procedures
5.3.1 The internal structures of the Garda Associations, and the rules set out in the Statutory Instruments 135/78, 151/83 and 63/98 will require review to determine what changes are necessary to allow for the proposed interaction with the WRC and the Labour Court. These Regulations, which currently provide for the basic internal democracy of the Garda representative Associations, do not mirror the rules which Trade Unions are obliged by the Trade Union Acts to include in their own constitutions. In any event, consideration will need to be given to rules, similar to those currently observed by Trade Unions, which will need to be put in place, by Regulation or otherwise, in order to allow the Associations have properly regulated access to the WRC/Labour Court. These governance rules may include, but are not limited to:

- Approval of rules by members via secret ballot;
- Approval of certain actions by secret ballot;
- Detailed rules on the conduct of secret ballots;
- Introducing procedures for informing members of decisions;
- Restriction on use of funds for certain political purposes.

5.3.2 The *Trade Union Acts 1871-1990* regulate the rules governing the operation of trade unions, and provide for a system of registration. Under these Acts trade unions are protected from prosecutions for economic torts including anti-competitive practices such as attempting to fix wage rates, and they also enjoy the benefit of Sections 10 to 13 of the Industrial Relations Act 1990\(^\text{15}\), which provide protection in law in relation to liability for the consequences of taking industrial action. This protection is subject to the following provisions:

- The immunity from prosecution only applies to members and officials of authorized trade unions;
- If the dispute relates to an individual worker, any agreed procedures in the workplace or procedures normally availed of by custom or practice must be availed of first;
- No union will organize, participate in, sanction or support a strike or other industrial action without a secret ballot of all affected members;

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\(^{15}\) *Industrial Relations Act 1990, Part II, Trade Union Law, the most relevant sections in terms of industrial relations engagement and the protections and positive requirements are: S10 – Acts in contemplation or furtherance of trade dispute, S11 – Peaceful picketing, S12 – Removal of liability for certain acts, S13 – Restriction of actions of tort against trade unions, S14 – Secret ballots, S15 – Power to alter rules of trade unions, S16 – Enforcements of rule of secret ballot, S17 – Actions contrary to outcome of secret ballot and S 19 – Restriction of right to injunction.*
• No union affiliated to ICTU will take industrial action unless it has been sanctioned by ICTU.

5.3.3 On an organisational/administrative level, for the Garda Associations to reconstitute as trade unions they would need to meet the same criteria as any other organisation seeking trade union status as regards registration with the Registrar of the Friendly Societies, drawing up rules governing the operation of the union. The rules should reflect the requirements of the Trade Union Acts regarding governance and operation of the trade union, including provisions related to balloting in respect of strikes and other industrial action. Registered Trade Unions have the legal standing to deal with property and engage in legal actions in their registered name, and also are required to keep accounts and make financial returns.

5.3.4 To become an Authorised Trade Union – i.e. hold a negotiation licence, approved by the Minister for Jobs, Enterprise and Innovation, allowing collective bargaining - there are a number of conditions that must be met. These include, significantly, the requirement to engage with ICTU, and to show that at a date not less than 18 months prior to the application, and at the date of the application, that they had not less than 1000 members. To maintain the benefits of holding a negotiating licence, trade unions must comply with a series of rules; breaches of these rules may result in such a licence being withdrawn and, inter alia, the right to engage in collective bargaining being removed.

5.3.5 The GRA, in the course of the consultation process, acknowledge that if the Association retains its current status the governance requirements regarding secret balloting, and also the protections under the Industrial Relations Acts, should be extended to then by regulation and legislation.

5.4 Access arrangements to WRC and Labour Court
5.4.1 The resolution of the recent Garda pay dispute included a commitment to introduce legislation to give members of the Garda Síochána access to the State industrial relations institutions - the Workplace Relations Commission (WRC) and the Labour Court – as a mechanism to resolve appropriate industrial relations disputes. As it stands, the legislative and administrative provisions in place do not allow the Garda Associations to have access to the WRC and the Labour Court in the context of a trade dispute (although, as noted elsewhere, individual Garda members have access in certain cases). However, the 2016 and subsequent
experience of an ad-hoc arrangement to allow access to resolve serious issues would suggest that the WRC and Labour Court have the capability to deal with disputes between the Garda Associations and Garda management. There will be changes required to the relevant legislation (see Section 8) and also to the rules and practices of the Garda Associations as part of a package of enabling measures. Equally important is the introduction of underlying protocols that will determine when and for what matters access should be provided, having regard to the current operation of the WRC and Labour Court.

5.4.2 It is normal industrial relations practice underpinned by the relevant legislation that the initial and main arena for resolution of issues lies with the parties themselves – the employers and the staff representatives. This is where more than 90% of all industrial relations issues, including the most serious, are resolved. Typically, the WRC deals with issues that cannot be resolved between the parties at local level. It is essential, therefore, that there is a robust and accessible internal disputes resolution mechanism available to the parties, to which all disputes must be referred initially. It will only be where this internal resolution process has been exhausted that any matter will be referred on to the WRC.

5.4.3 The Second Report of the Working Group (see Appendix A – Terms of Reference) will focus on the identification of an appropriate internal disputes resolution process. Without wishing to pre-empt the findings of the Working Group in this regard, it is relevant to note that, as an essential prerequisite to the onward reference of any matters to the WRC/Labour Court, the parties must be confident that the cases for both sides to a dispute have been identified and fully set out, that all solutions have been considered, and that there are not sufficient grounds for local agreement. This may require an examination of the resources and training available to both the management side and the staff Associations to ensure that the industrial relations experience and expertise necessary to facilitate the efficient and effective operation of the internal mechanism and, where relevant, engagement with the WRC/Labour Court, are in place.

5.4.4 The Garda Associations, in the course of the consultation process, accept that access to the WRC/Labour Court should only be an option following the advancing of any issue through robust internal dispute resolution mechanisms. All Associations are anxious that this element of the Working Group’s remit should be dealt without delay, following on from the ad-hoc Labour Court recommendation.
The GRA considers that disciplinary matters relating to Garda members are not appropriate to the WRC/Labour Court process, and that operational and policy matters remain the preserve of the Department and Garda Management. AGSI considers that Garda Members should enjoy the same access as all other workers in the State, including for adjudication matters. The GRA is open to Labour Court decisions being binding on the parties in certain circumstances; AGSI considers that further debate is required on this matter.

5.4.5 ICTU have expressed the view that access to the WRC and Labour Court is a feature of the industrial relations process which should remain restricted to trade unions with negotiating licences operating under the Industrial Relations legislation. They have indicated that there is potential for significant disruption to the overall conduct of industrial relations in the State if the current processes are varied for individual associations or groups of workers.

5.5 Constraints on Industrial Action

5.5.1 The ability to take industrial action in furtherance of a dispute – the 'right to strike' – can be characterized as an important weapon in the armoury of workers, to be used when all other approaches have failed. For private sector workers, it can be argued that the aim of striking workers is to inflict economic hardship on their employers by slowing or stopping production and therefore affecting profits, to reflect the hardship they claim to be suffering themselves. The law, significantly, recognizes this right in removing the threat to workers or trade unions of being sued by the employer for financial loss due to legitimately taken strike action - the Industrial Relations Acts provide for immunity for workers and their trade union representatives from certain legal consequences of taking such industrial action, but only where they are acting in contemplation or furtherance of a trade dispute.

For public servants there are different implications of going on strike. There is generally no quantifiable financial loss to a public service employer in a strike situation. In fact a benefit can accrue to employers in respect of salaries not paid. The means whereby the striking workers exert pressure on their employers is through the withdrawal of public services, which directly affects the public rather than the employers. The bargaining point is how long the employers (and ultimately the Government) are willing to allow the services to be suspended and the public to suffer, against how long the workers are prepared to go without pay.
5.5.2 The broad question of the right of those working in essential public services to take industrial action involves a delicate balancing act between the importance of the public need for essential services on one hand and the right of employees to a voice in the workplace and appropriate employment standards on the other. In the case of a police force there is the further complex issue as to whether a force which is founded on, and prides itself on, its disciplined nature can and should include in its governance structure the possibility of suspending discipline to the extent of refusing to go on duty. It is obvious that the withdrawal of labour in an industrial dispute will have a profound impact on the mission of any police service in terms of maintaining public order and combatting crime. However, balanced against that is “…the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interest of the workers”\textsuperscript{16}.

5.5.3 In the case of vital public services such as policing and security, governments may consider that the suspension or curtailment of these services, even for a short period of time, compromises public safety to an unacceptable extent. It is for this reason, and not to impose unfair restrictions on workers, that many countries in the EU and outside have an effective prohibition on taking industrial action (or in some cases joining trade unions) with regard to categories of public officials whose functions are directly related to national security and the protection of the rights and freedoms of others. In a paper published in 2007 by the European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS)\textsuperscript{17} a survey of thirty European countries found that twelve had outright legal prohibitions on strike action by police and members of the security services, and a further seven countries had severe legal restrictions on such action. Of the remaining countries most had implied restrictions, e.g. by requiring the approval of a court for strike action by police and other essential services or, as in the case of Ireland and the UK, maintaining a legal position that strike action in general is not supported by the law while allowing immunities to be granted in law in certain circumstances, which do not include strikes by police forces.

5.5.4 When considering these matters it is important to bear in mind that, as was acknowledged in the EuroCOP v Ireland case, the responsibilities of An Garda Síochána extend beyond general law enforcement and crime prevention to national security, immigration control and

\textsuperscript{16} European Confederation of Police (EuroCOP) – v- Ireland Complaint No 83/2012 Par 210
\textsuperscript{17} Strike Rules in the EU 27 and Beyond – a Comparative Overview, Warneck W, ETUI-REHS, 2007
the maintenance of public authority. The Decision of the Committee of Social Rights in the case set out that it is a legitimate purpose, in maintaining national security, to establish “restrictions on the exercise of the right to strike (such as requirements relating to the mode and form of industrial action)”\textsuperscript{18}. This was stated more forcefully in the dissenting opinion of the Committee vice-president who noted that, for the proper administration of public and national security, “a statutory prohibition of the right to strike for police personnel…constitutes a proportionate means to guarantee that their service is fully operational at all times”\textsuperscript{19}.

\textbf{5.5.5} The situations and remedies set out in the preceding paragraphs relate in the main to industrial action in the context of a strike, being a full or partial withdrawal of labour from all activities, either for a defined period or indefinitely, until an agreement is reached on the issues. There are, however, a variety of actions which may be taken by staff in furtherance of a dispute with their employers, include working ‘to rule’, withdrawing from specific activities, refusing to engage with change programs, etc. There are also less formal ways of withdrawing cooperation – it was noted in a 2015 paper on industrial action in EU public sectors that “in Sweden, where police are not allowed to strike, for three days in June 2014 officers protested about low wages by parking their police cars in public places while on duty and talking to passers-by”\textsuperscript{20}.

\textbf{5.5.6} It would be difficult to assess the impact of any such limited or ‘low-level’ industrial action on policing and crime prevention. A study of the 1997 police ‘slowdown’ in New York City indicates that the effects were mostly concentrated on the area of minor criminal disorder, with minimal impact on dealing with serious crime\textsuperscript{21}. However, it would not be unreasonable to assume that the impact of this type of action would have a corrosive effect on the public perception of An Garda Síochána as upholders of public authority, and also on the internal morale of a disciplined force in clear dispute with its own management. The impact of any industrial action on the maintenance of national security and implementation of emergency plans would also have to come under consideration, as even a minor impact in these areas could have catastrophic consequences.

\textsuperscript{18} European Confederation of Police (EuroCOP) –v- Ireland Complaint No 83/2012 Par 209

\textsuperscript{19} EuroCOP - Dissenting Opinion of Monica Schlachter, Birgitta Nyström and Marcin Wujciky

\textsuperscript{20} Public Sector is Focus of Industrial Action, Boehmer and ors, EurWORK, Nov 2015

5.5.7 When considering whether restrictions, similar to those imposed in other jurisdictions, could be imposed on members of An Garda Síochána it is essential to also consider how this could be effected without placing Garda members at a disadvantage when engaging in collective bargaining with their employers. It is important to bear in mind that maintaining a prohibition on industrial action of any kind should not act as a barrier to resolving IR issues.

5.5.8 The GRA have confirmed in the course of the consultation process that the normalisation of industrial relations in An Garda Síochána must include an entitlement to engage in industrial action, including strikes. Their view is that agreed voluntary limitations on industrial action together with robust dispute resolution mechanisms could act so as to make industrial action unnecessary. AGSI have confirmed their view that Garda members should have the same entitlement to take industrial action as all other workers in the State, and consider that the EuroCOP decision supports this approach.

5.5.9 The Policing Authority also noted the potential value of voluntary employment agreements, and suggested that any such agreements should include protocols for emergency cover.

5.6 Mechanisms for Pay Determination

5.6.1 Matters relating to pay are typically negotiated between employees (supported by their representative associations) and employers. In the case of the public service, employers represent the State and are instructed by the Government. The options for pay determination processes in the public service are limited, partly by the nature of the organisations involved, partly by history and tradition, and, in more recent times, by the framework of FEMPI legislation. Broadly speaking, pay determination can operate in the following ways:

- **Centralised or Decentralised:** The history of pay determination in the Irish public service, and particularly since 2009, has been of centralised negotiations between the Government, with proxy representation from D/PER and sectoral employers, and ICTU, represented by its Public Services Committee. Some non-ICTU representatives (including the Garda Associations) were included but separate negotiations did not take place. There is no remaining tradition in the public service of decentralised pay negotiation.
• **Cohesive or Fragmented:** In recent history, pay negotiations have been cohesive. That is, pay adjustments have applied equally (allowing for progressive salary banding) to staff at all grades and across all organisations. There have been no significant ‘special pay awards’ to particular grades or employees in particular organisations. As it stands, the restriction under FEMPI on cost-increasing claims remains in place and it is highly unlikely (apart from the rectification of minor anomalies) that a fragmented approach to pay claims or pay awards will be a feature of negotiations in the short to medium term.

• **General Round or Linked to Individual Performance:** While the introduction across the public service of performance management systems has led to significant changes in productivity and efficiency there is no specific link between performance and pay awards. In fact, Government has withdrawn from what arrangements were in place for the payment of performance-related awards, particularly at the higher end of pay. Increases have almost invariably been on a ‘general round’ basis, payable to all eligible staff.

It is clear that the pay determination process applying across the public service in the recent past and for the foreseeable future is a single centralised process mandated by Government, operated by a central Department (DPER), cohesive across all sectors, and of general application.

**5.6.2** The GRA, in the course of the consultation process, put forward a strong view that a Garda remuneration review body should be established, specifically designed for An Garda Síochána and concerned exclusively with Garda Pay. This would conduct 5-yearly reviews of pay and conditions in An Garda Síochána, taking account of the unique nature of police work. The Association of Garda Superintendents has put forward a similar view, although suggesting that independent pay reviews should take place every two to three years, supported by an expert committee.

**5.6.3** As set out above in Section 5.6.1, the approach to pay determination in Ireland is on a national, rather than sectoral, basis. In advance of the 2017 pay talks, which aimed at extending the Lansdowne Road (Public Service Stability) Agreement, the government established an independent Public Service Pay Commission (PSPC) to examine pay across the public service.
As part of this process the PSPC invited submissions from all staff representative bodies, including the Garda Associations. These submissions were reflected in the subsequent report to Government which fed into the pay talks’ process. The PSPC in this way is similar in its operation to the UK PRRB (although it is acknowledged that the role of the Pay Commission is to inform the Government rather than to prescribe any particular course of action).

The remit and approach of the Pay Commission is inclusive in nature, and provides a mechanism to consider issues relating to various public service groups, including An Garda Síochána, as directed by the Minister for Public Expenditure & Reform and as provided for under public service agreements. In this context the Garda Associations will have direct access in the immediate term to the Public Service Pay Commission on matters related to recruitment and retention, subject to their ratification of the PSSA 2018-2020, as part of the broad exercise to be taken forward by the Commission under the new Agreement. It is noted that the Horgan Report\(^{22}\) set out the reasons why the PSPC is the appropriate body to advise on Garda remuneration.

5.6.4 In national pay negotiations, involving the competing interests of more than 300,000 public servants, it may seem difficult for the Garda Associations to ensure that proper account is taken of the specific industrial relations challenges faced by their members. Despite their engagement in the process, in common with other representative bodies (whether affiliated to ICTU or not), they may find that participation under such a broad heading can be a limiting factor on the ability of the negotiations to address important issues relating specifically to the role and experience of An Garda Síochána. This derives from the nature of a centralised collective bargaining process, and is therefore not unique to the Garda Associations.

However, in national pay negotiations, and in particular the recently (June 2017) completed talks on the extension of the Lansdowne Road Agreement (Public Service Stability Agreement 2018-2020), the Garda Associations have been fully engaged in the negotiation process and have had full opportunity to present their case in relation to all the matters under discussion. In the 2013 Haddington Road Agreement this resulted in the inclusion, as part of the final text, of a separate appendix relating specifically to how that Agreement would impact on Garda members. When, following the 2016 Labour Court intervention, the Garda Associations agreed

to enter into the Lansdowne Road Agreement they benefitted from the restoration measures it contained, which applied across the entire public service.
6 Recommendations

6.1 Regarding Access to the WRC and Labour Court

6.1.1 The Garda Associations have a legitimate aspiration to have access to mechanisms for dealing with all matters relating to the terms and conditions of their employment. It has been the view of the Garda Associations that their inability to engage fully with significant elements of the industrial relations machinery of the State (the WRC and the Labour Court) has acted to confer a disadvantage on them with regard to negotiations on these terms and conditions.

One of the main purposes of the process leading to this report, and arising from previous reports and Government decisions, is to provide the Garda Associations with access to the WRC and the Labour Court as a means to resolve disputes that have not been resolved otherwise. This entails enabling access to a tried and trusted independent arbiter in situations where Garda members do not feel that the current arrangements are sufficient to their needs. The Working Group concurs with the views of the Garda Associations that providing access to the industrial relations machinery of the State is an essential output from phase one of the terms of reference.

6.1.2 In line with the Government Decision, the Garda Associations should be provided with access to the industrial relations machinery of the State, being the WRC and the Labour Court, to aid in resolving issues or disputes that cannot be otherwise resolved, and the Working Group so recommends accordingly. This may require additional resourcing of the respective bodies to effectively manage and deal with the work flow that will ensue.

6.1.3 The Industrial Relations Acts place the main responsibility for dispute prevention and resolution with the parties themselves. Following from this, the expectation is that the State institutions should only be accessed when parties have exhausted the employee engagement/dispute resolution mechanisms available to them. It will be critical in any implementation emanating from this process that this principle is understood from the outset by all parties to a dispute.

6.1.4 Regarding the internal dispute resolution mechanism, the current Garda C&A scheme addresses many of the requirements and it would be appropriate to continue to avail of this existing scheme, amended as required, for this purpose. Questions regarding the phases of the internal disputes process, and the matters that will be dealt with in each phase, will require a
significant level of engagement between Garda management and the Garda Associations. It is intended to deal with this latter issue in phase 2 of the work of the Working Group.

6.2 Regarding Trade Union Status

6.2.1 There is a question as to whether, in order to engage with the WRC and the Labour Court, the Garda Associations should be reconstituted as Trade Unions. A significant aspect of trade union status relates to the protections in legislation with regard to legitimate industrial action. There are also commensurate governance responsibilities, particularly with regard to decision making, communicating with members and the balloting process. Another question relevant to trade union status relates to participation by the Garda Associations in the public service pay talks. The view has been expressed by the Garda Associations that trade unions which are members of ICTU have an authority and a standing to engage in negotiations with regard to national pay agreements which is not reflected in the status of the Garda Associations. On foot of a Government commitment to address this issue, the WRC oversaw the recent negotiations on an extension to the Lansdowne Road Agreement with a view to ensuring that the Garda Associations had equal standing with members of ICTU throughout the talks’ process.

6.2.2 The GRA have expressed the view that Garda Associations should be defined as ‘excepted bodies’ under the 1941 Trade Union Act to ensure that they have full rights to engage in collective bargaining. In general, ‘excepted body’ status can be applied to allow for collective bargaining, although it does not address the question of legal protections in respect of industrial action. In the particular case of the Garda Associations, their entitlement to engage in collective bargaining is set out in the specific legislation under which they are constituted. Therefore, ‘excepted body’ status would not add to their current position.

6.2.3 In general terms, adopting a status as a trade union affiliated to ICTU gives rise to obligations and responsibilities to Congress and the broader trade union movement. This creates a risk that a Garda trade union might become embroiled in industrial action commenced by a different staff association in different sectors as part of a united ICTU campaign, involving incitement by members of ICTU or other affiliated trade unions to reduce or withdraw Garda services in support of a sectoral dispute. While ICTU works with the Government of the day in relation to employment conditions and labour market stability it also has a strong political perspective, and can engage in political campaigns in support of improving social condition
and social justice. This activism might be at odds with the non-political role of An Garda Síochána.

It is possible to envisage a number of scenarios in which the practices and traditions associated and expected of a Congress affiliated trade union would come into conflict with the policing responsibilities and duties of Garda members; for instance:

- Taking part in public protests in support of other ICTU trade union members;
- Policing of protests by other ICTU trade union members;
- Crossing picket lines set up by other ICTU trade union members (for reasons of public order or otherwise).

In addition, the role of An Garda Síochána in supporting and enforcing public authority and in implementing public authority decisions cannot be separated from its role in the delivery of essential policing services. Public policy may, for example, require An Garda Síochána to secure vital State infrastructure such as ports and airports in situations where these have been threatened with closure by industrial action (in December 2011, the French Government deployed police forces to replace striking private security workers at the two main airports in Paris).

It is clear that there are a number of situations where the conflicting requirements entailed by the holding of trade union status and/or affiliation with ICTU could potentially give rise to difficulties for individual members of An Garda Síochána and for the organisation as a whole in responding to public order issues and/or carrying out instructions relating to the exercise of public authority.

However, it must be noted that ICTU have raised significant concerns about the ability of the Garda Associations to engage fully with the State’s industrial relations processes unless they transition to becoming trade unions within the legislation.

6.2.4 The view of the Working Group is that the unique requirements of An Garda Síochána would not be served by reconstituting the Garda Associations as trade unions. It is worth noting, in this context, that in the EuroCOP decision the Committee found that there was no prohibition in Ireland against the establishment of trade unions by members of An Garda
Síochána on the basis that “the police representative associations enjoy the basic trade union rights within the meaning of article 5 of the charter”\textsuperscript{23}.

It is accepted that there would be a commensurate obligation to ensure that the members of An Garda Síochána are not disadvantaged as a result. It is also accepted that such elements of the legal provisions and rules applying in the operation of trade unions as are necessary requirements for allowing access to the WRC and the Labour Court should be adapted and incorporated into the governance of the Associations as appropriate in this context.

However, the Working Group acknowledges that this is an area of complexity and sensitivity, having regard to the differing views expressed by the Garda Associations, and to the views expressed by ICTU. Taking these into account, the Working Group recommends:

- That the Industrial Relations Act 1990 be amended as set out in the draft Heads of Bill (see Appendix E) to include members of An Garda Síochána in the definition of workers with access to the Workplace Relations Commission and Labour Court;
- That the Garda Associations maintain their current status as statutory bodies established by primary legislation passed by the Oireachtas to bargain collectively on behalf of their members, and do not transition to becoming trade unions under the legislation;
- That the Garda Síochána Association Regulations be amended to include the rules of governance that apply to trade unions and govern their interactions with the Workplace Relations Commission and Labour Court. The full details of these changes are to be identified as part of the work taking place during phase 2, and are to be implemented contemporaneously with the changes to primary legislation;
- That the Garda Associations should not be defined as ‘excepted bodies’ as this would have no practical impact on their ability to engage in collective bargaining or engage with the Workplace Relations Commission and Labour Court.

6.3 Regarding the Taking of Industrial Action

6.3.1 One of the fundamental issues for consideration by this Working Group surrounds whether members of An Garda Síochána should take industrial action up to and including its most extreme manifestation in the withdrawal of labour in a strike. The Working Group has a

\textsuperscript{23} European Confederation of Police (EuroCOP) –v- Ireland Complaint No 83/2012, Par 85
strong appreciation of the unique position of An Garda Síochána as a disciplined force under the control of the Garda Commissioner with responsibility for providing the essential services of policing, supporting public authority, protecting the rights of citizens and maintaining national security. This appreciation goes hand-in-hand with a recognition of the consequences for the State if the supply of these essential services was to be threatened or interrupted by industrial action.

6.3.2 There is an obligation on this Working Group to consider the responsibility that falls on the State and An Garda Síochána to ensure the uninterrupted delivery of the essential services associated with policing and national security. The vital nature of these services can be measured by the impact their absence would have on public authority, on national security and on the maintenance of law and order, and by the dire consequences for the State of such an absence. It is therefore difficult for this Working Group to come to any conclusion that might provide for or enable the withdrawal of these services. It is important also to note that the ‘industrial peace’ clause set out most recently in Section 8.1 of the proposed Public Service Stability Agreement 2018-2020 (Lansdowne Road Agreement extension) precludes all forms of industrial action in respect of any matters covered by the Agreement, including pay and conditions.

6.3.3 With regard to ‘lower-level’ industrial action, affecting the delivery of services but falling short of the withdrawal of labour, the Working Group is of the view that this should be avoided if at all possible, as it runs contrary to the fundamental ethos of a disciplined force. In addition, the concept of an ‘acceptable level’ of impact on services would indicate the non-vital nature of these particular services and call into question if they require to be carried out by members of An Garda Síochána. The Working Group is of the view, particularly with regard to the roles in national security and public authority, that subjecting particular duties to industrial action will necessarily have a ‘knock-on’ impact across the entire range of duties in these roles.

6.3.4 The Policing Authority recognises that while an approach that seeks to identify duties or units that can be allowed to take industrial action could potentially impact on the unity and the disciplined nature of the force, the growth in the number of specialist Garda units and the statutory separation of security from policing in the Garda Síochána Act 2005 may provide a valid basis for such an approach.
6.3.5 Taking all these matters into consideration, the recommendations of the Working Group on this point are

- That the members of An Garda Síochána should continue to be constrained from withdrawing their labour in any strike action likely to impact on policing, the security of the State or the maintenance of public authority; and
- That every effort should be made to identify and agree processes that will eliminate recourse to ‘lower level’ industrial action and/or reduce the impact of such industrial action on the most essential services provided by An Garda Síochána. This should form part of the discussions in relation to the internal dispute resolution process, and be carried out during phase 2 of the work of the Group.

It is recognised that these recommendations create a particular obligation to ensure that the dispute resolution and negotiation processes to be put in place are robust and effective, and that the members of An Garda Síochána are not disadvantaged as a result. Further detailed consideration and consultation should take place on this point in phase two of the work.

6.4 Regarding Mechanisms for Pay Determination

6.4.1 The requirements and recommendations set out previously, taken together, provide that the Garda Associations should be enabled to make representations with regard to pay and related conditions in a manner which is no less advantageous than the facilities available to other public servants. The current arrangements available to other public servants include primarily being able to:

- Make representations regarding overall pay issues to the Pay Commission, as appropriate and on request from the Commission;
- Engage with their employer(s) through internal mechanisms regarding matters pertaining to pay and conditions of service;
- Engage with the main industrial relations machinery of the State – the WRC and Labour Court – where issues cannot be resolved by other means.

Some or all of these measures have been put in place for the Garda Associations on an ad hoc basis over recent years, with significant success in addressing industrial relations issues within policing. Following implementation of the recommendations in this report, the Garda Associations will have an entitlement to access these facilities as part of the normal IR processes.
6.4.2 Having regard to the engagement of the Garda Associations in the negotiation of the national pay agreements, and specifically the Haddington Road and Lansdowne Road Agreements, this Working Group is of the view that in principle matters relating to pay and associated conditions in An Garda Síochána are suitable to be determined in the context of the central negotiations that have supported the successive public service agreements and FEMPI legislation over recent years. The Working Group also notes the restrictions under the FEMPI legislation against the bringing of cost-increasing claims in any forum outside the central negotiation process.

6.4.3 The Working Group accordingly recommends:

- That the structures referred to in 6.4.1 above – access to the Pay Commission when appropriate, to the WRC and the Labour Court as required, and access to robust internal dispute resolution measures – are to be made available to the Garda Associations;
- That the Garda Associations should, in all cases, be enabled to make representations with regard to pay and related conditions in a manner which is no less advantageous than the facilities available to other public servants;
7 Interim Measures

7.1 Proposed Interim Internal IR Structures
7.1.1 It is fully recognised and accepted by the Working Group that the question of the detailed operation of industrial relations procedures is a matter that will be discussed in Phase 2 of this process, in conjunction with the Garda Associations. The Policing Authority is of the view that a robust internal dispute resolution mechanism is essential to the ongoing normalisation and professionalisation of industrial relations processes within An Garda Síochána. The internal industrial relations machinery within the Garda Síochána should be capable of providing full responses to issues raised in the majority of cases, and be of proven effectiveness. In particular, it is important that there are clear timelines and that results can be reached.

7.1.2 Pending the full introduction of a revised Garda industrial relations structure, resulting from the recommendations of this Group or otherwise, there is a need for procedures and forums for the resolution of new and ongoing IR issues. Accordingly, the Group considers that it is within the remit of Phase 1 to make a recommendation on interim measures in this regard. In order to provide for a smooth transition process, the interim measures should not signal a sharp deviation from current/previous practices in this area, and should also seek to be similar, as far as possible, to the eventual permanent structure.

These interim measures will operate independently of any discussions taking place in phase 2 of the work of the Working Group. However, where possible, and subject to agreement, solutions identified in phase 2 discussions will be introduced, on a trial basis, to operate in conjunction with the interim structures.

7.2 The Conciliation Council – C&A
7.2.1 The structure currently available for open discussion of IR and related workplace issues is through the Garda Conciliation Council under the Conciliation and Arbitration Scheme. As a result of the prohibition, under the FEMPI legislation, against the introduction of any cost-increasing claims, meetings of the Garda Conciliation Council have become less frequent than heretofore over this period.
A meeting of the Conciliation Council was held on 20 March 2017, with a view to reviving the Garda C&A, and setting up a new schedule of meetings. It is proposed to continue this with a view to utilising the C&A process, amended as agreed and necessary, as a solution to deal with Garda IR issues pending the recommendation by the Working Group of a more permanent revision of the structures.

7.2.2 During the interim period, it is proposed that the C&A Scheme will operate as follows:
- A regular schedule of Conciliation Council meetings will be drawn up (this was agreed at the meeting of 20 March 2017). The aim will be for these to be at two-monthly intervals, with the intention of resolving as many outstanding issues as possible at each one.
- Discussions to take place between the Department of Justice, Garda HR and each Association in advance of the C&A meetings to review all new and outstanding issues (including claims relating to individual members) to determine if they should go forward to the Conciliation Council;
- Agreement on matters suitable, where necessary and based on current practice, to go forward to arbitration.

7.2.3 In addition, the Policing Authority has suggested that the C&A scheme, if it continues, should not be chaired by the Department of Justice and Equality and ideally should be independent.

7.3 Referral to WRC and Labour Court
It would be appropriate, during this interim period, for matters that cannot be resolved at arbitration to be referred to the WRC for consideration, with a view to achieving a facilitated agreement. Where such an outcome is not achieved, outstanding issues should be referred to the Labour Court for determination. The terms of this process will need to be agreed between all stakeholders at an early stage in Phase 2.
8 Next Steps & Legislation

8.1 Presentation of First Report and Follow-Up Actions

Following the completion and sign-off of this Report by the Working Group, it is to be presented to the Minister for Justice and Equality and the Minister for Jobs, Enterprise and Innovation for their consideration, and subsequently brought to Government by way of Memorandum. If the recommendations contained in this Report are accepted by Government, then the work necessary to facilitate their implementation will commence. This work will focus mainly on three discrete areas:

- Crafting an interim solution to cater for industrial relations issues, and in particular an internal disputes resolution mechanism. This will be agreed between all stakeholders and implemented at the earliest opportunity. In developing this interim solution it will be important to ensure that:
  - Industrial relations issues can be dealt with efficiently and effectively, so as to avoid any danger of escalation into industrial action, pending the introduction of permanent measures;
  - Interim measures form a coherent link between the current industrial relations structures and the proposed future structures.

- Drafting the Heads of a Bill to encompass all the legislative changes required to give effect in legislation to the new arrangements for access to the Workplace Relations Commission and the Labour Court.

- Reviewing and identifying any changes that might need to be made to the internal structures and resources of stakeholders affected by the new arrangements. This will include any proposed changes to the Garda Associations and to the WRC and Labour Court. It is expected that any changes will become clearer through the operation of the interim solution over time.

8.2 Industrial Relations and Internal Dispute Resolution Processes – Second Report

8.2.1 The Terms of Reference for the Working Group provide for issuing of a second report, which will follow on from the next phase of the work of the Working Group. This second phase will focus on

- How industrial relations should operate in An Garda Síochána when the Garda Associations have been given access to the WRC and Labour Court;
• The resource and related issues that will arise, both for the WRC/Labour Court and An Garda Síochána.

This second report is due to be furnished to the Minister for Justice and Equality and the Minister for Jobs, Enterprise and Innovation on completion of this phase of the work by 31 October 2017.

8.2.2 A key element of this phase will be the identification of a permanent mechanism for resolution of internal disputes to follow on from the interim measures referred to in section 8.1 above. Ideally, this should build on and be compatible with the interim solution, although this consideration should not act to restrict the number of nature of the options. It is expected that the internal, practical and operational aspects of the dispute resolution mechanism will emanate mainly from discussions between the Garda Associations and Garda management.

8.2.3 The nature of the interactions between the Garda Associations, Garda management and the WRC/Labour Court will be determined in discussions between the stakeholders. This will include consideration of the internal disputes processes that must be engaged and exhausted prior to any onward reference, and the nature of the WRC/Labour Court services that will be made available to the Garda Associations. The protocols and procedures that will govern the interactions will be agreed at this stage, and the parties will have an opportunity to consider whether there are implications for resourcing.

8.3 Changes to Legislation
8.3.1 Having regard to consultations with the Department of Jobs, Enterprise and Innovation and the Office of the Attorney General it is clear that amendments to existing legislation are required to allow members of An Garda Síochána access the industrial relations machinery of the State in the event of an unresolved dispute. A draft of the Heads of a Bill incorporating the changes to the Trade Unions Acts required to give effect to a decision to grant access to the Garda Associations to the Workplace Relation Commission and the Labour Court is set out at Appendix E.

8.3.2 Part III of the Industrial Relations Act 1990, which deals with the machinery for the resolution of disputes, applies to “workers” as defined in section 23 of the Act. The wording of this definition has the effect of excluding members of the Garda Síochána who are office
holders. Extending the definition of “workers” in the Act to include members of the Garda Síochána will allow the WRC, in accordance with the protocols in place and subject to the parties having exhausted the internal dispute resolution mechanisms, to offer the parties the services appropriate to bringing about a settlement to a dispute. In addition, the WRC, in the event that it is unable to advance the resolution of the dispute, will be able to furnish a report to the Labour Court if the parties to the dispute request the Labour Court to investigate the dispute. It will also enable the Labour Court to investigate a dispute if the Chair of the WRC notifies the Court that it waives its function of conciliation. A similar amendment to Part II of the 1990 Act is required to allow Garda members to enter into a trade dispute in the meaning of the Act.

8.3.3 Section 9(2) of the 1939 Offences against the State Act provides for sanctions against inciting or encouraging State employees to refuse to do their duty. It should be noted that the Report of the Committee to Review the Offences against the State Acts 1930–1998 (the Hederman Report) suggested that this sanction was satisfactory and defensible, subject to the inclusion of specific protection for persons engaging in industrial relations disputes. Section 59 of the Garda Síochána Act 2005 will also need to be considered – this provides that 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. Further consultation with the Office of the Attorney General will determine if changes are required to cater for these provisions.

8.3.4 The Working Group considers that the Garda Associations do not need to be declared as ‘excepted bodies’ in the meaning of Section 6 of the 1941 trade union Act as the ability to engage in collective bargaining is already provided for in their underpinning legislation (see recommendation in Section 6.2.4). However, an amendment to the 1941 Act has been identified by the GRA in their submission as an immediate requirement. It therefore should be noted that an excepted body is an independent body whose members are employed by the same employer, and which carries on engagements or negotiations with the employer with the object

24 A “trade dispute” in the terms of the Industrial Relations Act 1990 means any dispute between employers and workers which is connected with the employment or non-employment, or the terms or conditions of or affecting the employment, of any person. If unresolved, a trade dispute may, in certain circumstances, lead to industrial action.
of reaching agreement regarding wages, or other conditions of employment, of its own members, but not for any other employees in other workplaces.

8.3.5 Further amendments will be required to the statutory framework governing the Garda Associations, as set out in the Garda Síochána (Associations) Regulations 135/1978, the Garda Síochána (Associations) (Amendment) Regulations 151/1983, and the Garda Síochána (Associations) (Amendment) Regulations 63/1998. In particular, amendments to confirm the requirement for secret balloting of members in cases of disputes will need to be reflected in these regulations. Other requirements will arise from discussions in phase 2 of the work of the Working Group.
Appendix A

Terms of Reference of the Working Group:

Industrial Relations Structures for An Garda Síochána

In pursuance of the Government Decision S180/20/10/2108 of 20/12/2016 regarding legislation to provide the Garda Representative Associations with access to the State industrial relations institutions, to consider, having regard to (a) international experience and norms, (b) the decision of the Committee on Social Affairs in the EUROCOP case and (c) the recommendations in the Horgan Report:

(1) how the decision to grant access to the Workplace Relations Commission and the Labour Court to the Garda Associations may be given effect to, including such legislation as may be required, and in that context

(i) the status of the Garda Associations established under the Garda Síochána Acts and the related question of the constraints on members taking industrial action;

(ii) the meaning of access in terms of the matters for which access is to be given and the requirement to exhaust internal processes;

(iii) whether normal trade union rules and procedures, that currently do not apply to the Garda Associations and which bring discipline and certain constraints to trade union activity, should apply, and any mechanisms that might be required to achieve same;

(2) how industrial relations should operate in An Garda Síochána when the Garda Associations have been given access to the WRC and Labour Court, having regard to the historic roles of the Ministers of Justice and Equality and Public Expenditure and Reform and Garda Management in this regard, and

(3) the resource and related issues that will arise for both the WRC/Labour Court and An Garda Síochána.

And to report to the Tánaiste and Minister for Justice and Equality and the Minister for Jobs, Enterprise and Innovation in relation to (1) by 31 May 2017 and in relation to (2) and (3) by 31 October 2017.
Appendix B Status of Garda Associations

Appendix B

Status of the Garda Associations and Constraints on Industrial Action

The formation of the current professional representative Associations in respect of members of the Garda Síochána below the rank of Assistant Commissioner is provided for in legislation – S18 of the consolidated 2005 Garda Síochána Act. This legislation, and associated Regulations, set out both the framework and the detailed rules under which these Associations operate. The general provisions provided under legislation include stipulations that the Associations must be independent of and not associated with any person or body outside of An Garda Síochána, and that Members of An Garda Síochána cannot become members of any other trade union or association (other than Associations provided under legislation relating to An Garda Síochána) any object of which is to control or influence pay, pensions and conditions of An Garda Síochána. It is clear that while these legal provisions remain in place there is no prospect of the Garda Associations, regardless of their own status, being able to engage with umbrella organisations such as ICTU or engage in industrial relations activities in conjunction with other public service bodies.

At present, members of An Garda Síochána are constrained in their capacity to take industrial action. It is an offence under section 9 of the Offences against the State Act 1939 for any person to incite or encourage any person employed by the State to refuse, neglect or omit (in a manner or to an extent calculated to dislocate the public service or a branch thereof) to perform his duty or to incite or encourage any person so employed to be negligent or insubordinate in the performance of his duty. It is an offence under section 59 of the Garda Síochána Act 2005 for any person to induce, or do any act calculated to induce, a member of the Garda Síochána to withhold his or her services or to commit a breach of discipline. Under regulation 5 of the Garda Síochána (Discipline) Regulations 2007 it is a breach of discipline for any member of the Garda Síochána to do any act which obstructs the operation or implementation of any official policy, directions or instructions. As a corollary of this, members of the Garda Associations are excluded from the protections under the Industrial Relations Acts for persons engaged in industrial action.
Appendix C

Consultation Paper Issued to Garda Associations

Working Group on Industrial Relations Structures for An Garda Síochána

Consultation Paper

April 2017
Appendix C Consultation paper

Introduction

This Working Group has been established to advise the Government on the legislation that is required to provide the Garda Representative Associations with access to the State industrial relations institutions; the Terms of Reference for the Working Group are set out at Appendix A.

The Working Group recognises the importance of wide-ranging consultation in this regard and in particular the importance that must be attached to the views of stake-holders who will be most directly impacted by any recommendations; notable among whom are the Garda Representative Associations. This consultation document seeks to set out a range of key issues on which the Working Group considers the views of stakeholders would be of importance in their deliberations. The views expressed by stake-holders through this process will be carefully considered by the Working Group along with the other matters set out in their Terms of Reference viz (a) international experience and norms, (b) the decision of the Committee on Social Affairs in the EUROCOP case and (c) the recommendations in the Horgan Report.

Consideration of any change in the industrial relation framework for An Garda Síochána needs to be underpinned by an analysis of the potential implications for:

- An Garda Síochána as a single national police service, which deals with all aspects of policing matters including regular policing, state security and immigration control,
- The disciplined nature of the service and difficulties that could arise if members were to be directed by decisions of another entity which would not necessarily be constrained by concerns around the functions of An Garda Síochána,
- The imperative that the public perception of the impartiality of An Garda Síochána is not undermined, and
- The requirement for a fair mechanism through which matters affecting the welfare and efficiency of members are resolved.

**Question 1: Do you think this reflects the full range of issues that should underpin any consideration of these matters?**

This document outlines 4 key issues that require consideration; these are:

- On what range of matters should access be provided to the Workplace Relations Commission (WRC) and Labour Court?
- What internal processes are required to be in place and be exhausted prior to issues being brought to the WRC, and, more generally?
- Should there be constraints on the Taking of Industrial Action by members of An Garda Síochána?
- Should the Garda Associations be reconstituted as Trade Unions?

**Question 2: Do you agree that these are the key issues or are there other important issues that require consideration?**
Appendix C Consultation paper

On what range of matters should access be provided to the Workplace Relations Commission (WRC) and Labour Court?

The Workplace Relations Commission (WRC) has responsibility for a range of the matters most important of which in the current context is perhaps “promoting the improvement of workplace relations, and maintenance of good workplace relations”.

Services provided by the WRC in this regard include,

Advisory Service
- The Advisory Service provides advice and assistance on workplace relations in the workplace to employers, employees and their representatives. It helps employers and employees to develop positive working relationships and mechanisms to solve problems.

Conciliation Service
- The Conciliation Service helps employers and their employees to resolve disputes when they have been unable to reach agreement during their own previous negotiations. An Industrial Relations Officer of the Commission acts as chairperson during meetings to negotiate an agreement. In 2016 some 86% of the cases referred to conciliation were settled.

Essentially the WRC seeks to encourage and facilitate parties to resolve disputes among themselves. It is not within the WRC remit generally to issue binding recommendations. If, however, no agreement is reached then, if the parties wish, the dispute may be referred to the Labour Court.

The mission statement of the Labour Court is “To find a basis for real and substantial agreement through the provision of fast, fair, informal and inexpensive arrangements for the adjudication and resolution of trade disputes”.

The Labour Court is not a court of law. It operates as an industrial relations tribunal, hearing both sides in a case and then issuing a Recommendation (or Determination/Decision/Order, depending of the type of case) setting out its opinion on the dispute and the terms on which it should be settled.

Recommendations made by the Court concerning the investigation of disputes under the Industrial Relations Acts 1946–2015 are not binding on the parties concerned, however, the parties are expected to give serious consideration to the Court’s Recommendation. Ultimately, however, responsibility for the settlement of a dispute rests with the parties.

Under Section 20 of the Industrial Relations Act 1969 workers or Trade Unions when asking the Court to investigate a trade dispute can undertake in advance to accept the decision of the Court.

There are no specific restrictions on what matters can be brought before the Workplace Relations Commission. Access to the WRC currently would be through a general legislative provision that provides that “the commission may at the request of one or more parties to a trade dispute or on its own initiative offer the parties its appropriate services with a view to bringing about a settlement”. 25

There are a number of legislative provisions that would require amendment to allow the Garda Representative Associations access to the WRC and the Labour Court in the context of a ‘trade dispute’.

The current arrangements for dealing with such matters in An Garda Síochána is the Conciliation and Arbitration Scheme, under which certain matters are raised at Council by either side and if agreed through a process of conciliation, are implemented. In some cases, where agreement cannot be reached, an arbitration...

25 25(2) of the Industrial Relations Act 1990.
process is invoked. While every matter that is brought to Council must be conciliable, not every matter is arbitrable.

The following matters are conciliable under the Scheme: claims relating to pay and allowances and other emoluments whether in cash or in kind; hours of duty, claims in relation to loss of earnings; standards of accommodation officially provided; principles governing the provision and allocation of living accommodation officially provided; principles governing superannuation, principles governing the grant of annual, sick and special leave; principles governing recruitment; principles governing promotion; principles governing discipline; principles governing transfers; suggestions of general application for promoting the efficiency of the Force.

A more restricted range of issues are arbitrable, these are: claims for adjustments of rates of pay and allowances (including claims for new allowances); claims in regard to periods of annual leave and sick leave; claims in regard to total weekly hours of work; claims in regard to overtime; and, claims for compensation for loss of earnings. Notably, claims affecting individual members are outside the scope of the Scheme as are operational matters.

As set out in the Scheme its existence does not imply that the Government have surrendered or can surrender their liberty of action in the exercise of their constitutional authority and the discharge of their responsibilities in the public interest.

The Workplace Relations Commission (WRC) has responsibility for “promoting and encouraging compliance with relevant employment legislation. The service provided by the WRC in this regard is Adjudication; the Adjudication Service investigates disputes, grievances and claims that individuals or small groups of workers make under the employment legislation.

Members of the Garda Síochána already have access to the WRC for certain rights-based matters. Members also have access to the WRC in cases of harassment and the Garda Síochána utilises the WRC mediation service when members agree, as part of its Bullying and Harassment Policy.

The Labour Court has sole appellate jurisdiction in all disputes under employment rights enactments. The Court's determinations under the Employment Rights enactment are legally binding.

**Question 3:** On what range of matters should access to the WRC and the Labour Court be provided?

**Question 4:** Are there certain matters which it would not be appropriate to bring before the WRC or the Labour Court?

**Question 5:** If there are certain matters that would not be appropriate to the WRC or the Labour Court, what process should be put in place for such matters?

**Question 6:** Neither the WRC or the Labour Court make decisions that are binding on parties; would it be appropriate in relation to An Garda Síochána to have a mechanism for making decisions that are binding on parties?

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Appendix C Consultation paper

**What internal processes are required to be in place and be exhausted prior to issues being brought to the WRC, and, more generally?**

As a matter of principle and general practice the State dispute resolution bodies should only be accessed when parties have exhausted the internal dispute resolution mechanisms available to them. As outlined, the formal management of industrial relations in the Garda Síochána is provided by means of a Conciliation and Arbitration Scheme to which each of the four Garda Associations, the Garda Commissioner and the Minster for Justice and Equality and the Minister for Public Expenditure and Reform are a party. The Scheme is based on the collective bargaining system of co-determinism and is an arrangement voluntarily entered into by both the management and staff side interests within agreed structures and mechanisms.

Certain matters are raised at Council by either side and if agreed through a process of conciliation, are implemented. In some cases, where agreement cannot be reached, an arbitration process is invoked. While every matter that is brought to Council must be conciliable, not every matter is arbitrable. The Chair of the Conciliation Council is a senior official in the Department of Justice and Equality; though, it should be noted, that they do not work in the policing Division of the Department. Where disagreement has been reached in relation to certain matters, an Arbitration Board may be appointed; this Board is comprised of a nominee of the Associations, a nominee of the Government and a Chair who is nominated by Government in agreement with the Associations. The Board may present findings to the Minister; where the Minister does not propose to implement such findings they must introduce a motion in Dáil Éireann to that effect.

Management and representative bodies have a responsibility to seek to resolve issues at the lowest level possible before seeking to elevate matters to more formal mechanisms. In this connection Garda management have issued a draft Joint Protocol for Consultation and Dispute Resolution which is the subject of ongoing discussions with the Associations.

**Question 7:** Are there elements of the current C&A Scheme that should be retained as an internal mechanism for consultation and dispute resolution?

**Question 8:** Are there amendments that could be made to the current C&A Scheme in terms of its composition, scope and procedures that would enhance its capacity for internal dispute resolution?

**Question 9:** If the C&A should not be retained, in either whole or part, what mechanisms should replace it?

**Question 10:** What amendments, if any, would enhance the draft Joint Protocol for Consultation and Dispute Resolution as a means of resolving disputes at the most appropriate level?

**Should there be constraints on the Taking of Industrial Action by members of An Garda Síochána?**

The question of the right of those working in essential services, particularly law enforcement, to take industrial action involves striking a delicate balance between the importance of the publics’ need for essential services on one hand and the right of employees to a voice in the workplace and appropriate employment standards on the other. This is particularly so in the case of An Garda Síochána given that the organisation is a single national police service with responsibilities for not only general law enforcement but also state security and immigration control.
Appendix C Consultation paper

In most common law jurisdictions members of law enforcement are normally restricted in taking industrial action or from joining trade unions. As a result of these constraints, law enforcement members can be placed at a perceived disadvantage when engaging in collective bargaining with their employers. However, while striking or other forms of industrial action may be illegal, legislative prohibitions alone can be ineffective in preventing members of law enforcement from withdrawing their labour in practice. Therefore, given the need to avoid industrial disputes between law enforcement and their employers, the State, it is common practice in many jurisdictions to have some form of industrial relations mechanism, whether specific to law enforcement or of a more general nature, in place to resolve disputes particularly those regarding pay and conditions.

At present, members of An Garda Síochána are constrained in their capacity to take industrial action. It is an offence under section 9 of the Offences against the State Act 1939 for any person to incite or encourage any person employed by the State to refuse, neglect or omit (in a manner or to an extent calculated to dislocate the public service or a branch thereof) to perform his duty or to incite or encourage any person so employed to be negligent or insubordinate in the performance of his duty. It is an offence under section 59 of the Garda Síochána Act 2005 for any person to induce, or do any act calculated to induce, a member of the Garda Síochána to withhold his or her services or to commit a breach of discipline. Under regulation 5 of the Garda Síochána (Discipline) Regulations 2007 it is a breach of discipline for any member of the Garda Síochána to do any act which obstructs the operation or implementation of any official policy, directions or instructions. As a corollary of this, members of the Garda Associations are excluded from the protections under the Industrial Relations Acts for persons engaged in industrial action.

At an international level, particularly among common law jurisdictions it is the norm to have some form of restriction on the right of members of law enforcement to engage in industrial action. The level of restriction varies according to the jurisdiction in question, for example, police officers in New Zealand and the UK are prohibited by law from engaging in strike action, whereas some form industrial action among law enforcement are permitted in Australia, though this again can vary depending on the state/territory in question.

Question 11: Should the current legislative provisions that operate to constrain the taking of industrial action by An Garda Síochána be maintained?

Question 12: If the current legislative position was to be amended, what form should such amendment take?

Question 13: If the current legislative position was to be maintained, what other measures would be appropriate to be taken to reflect the impact of this on the capacity of the Garda Associations to advance the position of their members?
Appendix C Consultation paper

Should the Garda Associations be reconstituted as Trade Unions?

There are currently four Garda Associations who represent the interests of members below the rank of Assistant Commissioner in all matters affecting their welfare and efficiency (including pay, pensions and conditions of service).

These Associations are provided for in Section 18 of the Garda Síochána Act 2005 which makes certain stipulations in respect of the Associations. These include that:

- The Associations must be independent of and not associated with any body or person outside of An Garda Síochána, and
- Members of An Garda Síochána cannot become members of any other trade union or association (other than Associations provided under legislation relating to An Garda Síochána) any object of which is to control or influence pay, pensions and conditions of An Garda Síochána.

Some internal rules relating to the operations of the Associations are provided for by way of regulation. These include rules in relation to such matters as:

- the election of union representatives and officers,
- the vesting of the management of Associations in Annual or Special Conferences and Central or National Executive Committees,
- the holding of meetings,
- the role of the Annual (or Special) Conference as the primary policy making body of the Association,
- the officers and post holders in Associations (e.g. President, General Secretary etc.) including election or appointment, and
- voting weights and procedures in the event of tied votes.

Such regulation as is provided for is focused on basic system of internal democracy and it is of note that other than where issues are addressed in these regulations that the Associations may conduct their affairs in accordance with a Constitution or Rules made by the Associations.

Given the constraints on the taking of industrial action by An Garda Síochána provisions relating to decision making in this regard are not provided for.

The Associations are financially supported by the Department of Justice & Equality.

For an association of workers to become a Trade Union they must register with the Registrar of the Friendly Societies. To register a trade union, the grouping involved, which must consist of at least seven people, must draw up a set of rules governing the operation of the union. The rules must as a minimum contain the matters required to be provided for by Trade Union Acts which set out in detail the governance requirements and rules which need to be in place to lawfully run a Trade Union; notably they include the requirement that the rules of every trade Union must contain provisions related to balloting in respect of strikes and other industrial action.

The principal benefits of registering as a Trade Union relate to the capacity of the Union to deal with property, allows officers of the Union to defend legal actions to protect its property and it assists the Union in protecting its funds against fraud. Registration also gives rise to obligations. These include a duty to make annual financial returns (outlining assets and liabilities as well as receipts and expenditure); registered trade unions may also be sued in their registered name.

More significant benefits and obligations arise from being an Authorised Trade Union that is one which holds a negotiation licence. Registration as a trade union does not guarantee that a union will be granted a negotiation licence; this is a matter for the Minister for Jobs, Enterprise and Innovation. There are a number of requirements that must be met in applying to be granted a negotiation licence; these include:
Appendix C Consultation paper

- At least 18 months before the date of application for a licence it notifies its intention to make an application to the Minister for Jobs, Enterprise and Innovation and ICTU (there are also publicity requirements)
- The Union must be registered
- The Union must show that at a date not less than 18 months prior to the application, and at the date of the application, that they had not less than 1000 members
- The Union must keep a certain sum of money lodged with the High Court
- The Union’s rules incorporate the provisions of Section 14 of the Industrial Relations Act, 1990 relating to secret ballots.

Unions which hold a negotiation licence, and which abide by the relevant rules, enjoy certain benefits. These include:

- It may carry out collective bargaining,
- It obtains the benefit of Part II of the Industrial Relations Act 1990\(^27\),
- Its members and officials obtain the benefits of Section 11, 12 and 13 of the 1990 Act, and
- Its members obtain certain benefits under employment protection legislation such as dismissal for membership of an authorised trade union.

To maintain the benefits of holding a negotiating licence, trade unions must comply with a series of rules; breaches of these rules may result in such a licence being withdrawn and, inter alia, the right to engage in collective bargaining being removed.

**Question 14: Should the Garda Associations be reconstituted as Trade Unions?**

**Question 15: If the Garda Associations were to be reconstituted as Trade Unions, are there aspects of Trade Union law that would be inappropriate or inimical to effective policing?**

**Question 16: Many of the additional benefits and protections associated with Trade Union status, over and above that already enjoyed by the Associations, relate to protections where industrial action arises; should the Garda Associations be reconstituted as Trade Unions if the current legislative provisions that operate to constrain the taking of industrial action by An Garda Síochána are to be maintained?**

**Question 17: If the Garda Associations were to be reconstituted as Trade Unions, would the continuing provision of financial support to them be appropriate or would normal Trade Union funding arrangement apply with support for matters like training in good industrial relations practices being provided separately?**

**Question 18: If the Garda Associations were not to be reconstituted as Trade Unions, should some of the requirements and protections, for example in relation to balloting, be provided for in legislation in relation to the Associations?**

\(^27\) Industrial Relations Act 1990, Part II, Trade Union Law: the most relevant sections in terms of industrial relations engagement and the protections and positive requirements are: S10 - Acts in contemplation or furtherance of trade dispute, S11 - Peaceful picketing, S12 - Removal of liability for certain acts, S13 - Restriction of actions of tort against trade unions, S14 - Secret ballots, S15 - Power to alter rules of trade unions, S16 - Enforcements of rule of secret ballot, S17 - Actions contrary to outcome of secret ballot and S19 - Restriction of right to injunction.
Appendix C Consultation paper

Draft Working Group Terms of Reference

Industrial Relations Structures for An Garda Síochána

In pursuance of the Government Decision S180/20/10/2108 of 20/12/2016 regarding legislation to provide the Garda Representative Associations with access to the State industrial relations institutions, to consider, having regard to (a) international experience and norms, (b) the decision of the Committee on Social Affairs in the EUROCOP case and (c) the recommendations in the Horgan Report:

(1) how the decision to grant access to the Workplace Relations Commission and the Labour Court to the Garda Associations may be given effect to, including such legislation as may be required, and in that context

(i) the status of the Garda Associations established under the Garda Síochána Acts and the related question of the constraints on members taking industrial action;

(ii) the meaning of access in terms of the matters for which access is to be given and the requirement to exhaust internal processes;

(iii) whether normal trade union rules and procedures, that currently do not apply to the Garda Associations and which bring discipline and certain constraints to trade union activity, should apply, and any mechanisms that might be required to achieve same;

(2) how industrial relations should operate in An Garda Síochána when the Garda Associations have been given access to the WRC and Labour Court, having regard to the historic roles of the Ministers of Justice and Equality and Public Expenditure and Reform and Garda Management in this regard, and

(3) the resource and related issues that will arise for both the WRC/Labour Court and An Garda Síochána.

And to report to the Tánaiste and Minister for Justice and Equality and the Minister for Jobs, Enterprise and Innovation in relation to (1) by 31 May 2017 and in relation to (2) and (3) by 31 October 2017.
Appendix D

Terms of Reference of UK Police Remuneration Review Body

The Police Remuneration Review Body (PRRB) provides independent recommendations to the Home Secretary and to the Northern Ireland Minister of Justice on the hours of duty, leave, pay, allowances and the issue, use and return of police clothing, personal equipment and accoutrements for police officers of or below the rank of chief superintendent and police cadets in England and Wales, and Northern Ireland respectively. In reaching its recommendations the review body must have regard to the following considerations:

- The particular frontline role and nature of the office of constable in British policing;
- The prohibition on police officers being members of a trade union or withdrawing their labour;
- The need to recruit, retain and motivate suitably able and qualified officers;
- The funds available to the Home Office, as set out in the Government’s departmental expenditure limits, and the representations of police and crime commissioners and the Northern Ireland Policing Board in respect of local funding issues;
- The Government’s wider public sector pay policy;
- The Government’s policies for improving public services;
- The work of the College of Policing;
- The work of police and crime commissioners;
- Relevant legal obligations on the police service in England and Wales and Northern Ireland, including anti-discrimination legislation regarding age, gender, race, sexual orientation, religion and belief, and disability;
- The operating environments of different forces, including consideration of the specific challenges of policing in rural or large metropolitan areas and in Northern Ireland, as well as any specific national roles which forces may have;
- Any relevant legislative changes to employment law which do not automatically apply to police officers;
- That the remuneration of the remit group relates coherently to that of chief officer ranks.

The review body should also be required to consider other specific issues as directed by the Home Secretary and/or the Northern Ireland Minister of Justice, and should be required to take account of the economic and other evidence submitted by the Government, professional representatives and others.
It is also important for the review body to be mindful of developments in police officer pensions to ensure that there is a consistent, strategic and holistic approach to police pay and conditions.


2) The Police Remuneration Review Body was established by the Anti-social Behaviour, Crime and Policing Act 2014, and became operational in September 2014.
Appendix E Draft Head of Bill

Appendix E

Draft - Heads of Bill

Head 1 – Worker

Provide that:

1. Section 23 (1) of the Industrial Relations Act of 1990 is amended, in paragraph (1), by the inclusion of “members of An Garda Síochána” within the meaning of the Garda Síochána Acts, after “in particular “.

2. The Minister of Jobs Enterprise and Innovation shall, by order, appoint a day to be the commencement day for the purpose of this section of the Act.

The Industrial Relations Acts and, in particular the Industrial Relations Act 1990, form the statutory basis for the current system of industrial relations in Ireland. The 1990 Act established the Labour Relations Commission (LRC) and provided access via the LRC to the Labour Court for workers and employers as a final court of appeal in relation to trade disputes. The Workplace Relations Act 2015 rationalised and merged the overall State industrial relations machinery, with the merger of the functions of the LRC into a new body, the Workplace Relations Commission.

Section 23 of the 1990 Act sets out the categories of workers who can avail of the WRC and the Labour Court. This does not include persons who are office holders of the state rather than employees of the state, although section 23(3)(a) gives the power to the Minister of Public Expenditure and Reform to designate those employed by the State to be entitled to avail of the WRC and Labour Court. However, since members of Garda Síochána are not employees but rather office holders within the meaning of the Garda Síochána Acts this does not give Garda Síochána members and their representative bodies direct access to the WRC and the Labour Court. Consequently, industrial relations matters for Garda Síochána members are currently managed through the conciliation and arbitration scheme for An Garda Síochána. A majority of the Garda representative bodies have now sought to gain full access for its members to the
State industrial relations machinery which exists under the Industrial Relations Acts, the Workplace Relations Commission and the Labour Court.

The amendment to section 23(1) of the Industrial Relations Act 1990 is to include the wording members of An Garda Síochána as a particular type of occupation in this section. While this amendment will enable the inclusion of established Garda Síochána in the normal industrial relations machinery of the State, substantial preparatory work is envisaged in conjunction with Garda Síochána representative bodies and human resource unit in Department of Justice and Equality and the Department of Public Expenditure and Reform and the Workplace Relations Commission to prepare for any change. Thus this amendment will be subject to a commencement order.

**Head 2 – Trade Disputes**

**Provide that:**

**Part II, Section 8 of the Industrial Relations Act 1990 is amended, by the deletion of “but does not include a member of the Defences forces or of the Garda Síochána” and the insertion of “includes a member of An Garda Síochána but does not include a member of the Defences forces”**.

In Part II, Section 8 of the Industrial Relations Act 1990, the definition of worker specifically excludes members of Garda Síochána as workers who can be involved in a trade dispute. As a trade dispute means any dispute between employers and workers, the term worker in this section of the Act does not encompass a dispute between members of An Garda Síochána and an employer. The wording in this section would need to include rather than exclude Garda Síochána members to enable them to become involved in a trade dispute under this Act.
Appendix F

Submissions from Garda Associations in response to Consultation Paper

F1. Submission from the Garda Representative Association (GRA)

Industrial Relations Structures for An Garda Síochána: A Response to the Working Group’s Consultation Paper

Prepared for consideration by the GRA Strategy and Services Committee
29 June 2017
Appendix F1 Submissions from Garda Associations - GRA

Industrial Relations Structures for An Garda Síochána:
A Response to the Working Group’s Consultation Paper

1. INTRODUCTION

Overview

The Garda Representative Association (GRA) welcomes the opportunity to make a submission to the Working Group on Industrial Relations Structures for An Garda Síochána. In making this submission, we have responded to each question asked. We have also addressed issues not directly raised in the consultation paper, most notably the issues of excepted body status, the right to engage in collective bargaining and a mechanism to give effect to the application of the European Working Time Directive (EWTD) in An Garda Síochána. In line with the structure of the consultation paper, we have sought to clearly identify the views of the GRA. We have also been cognisant of the need to advance constructive solutions that will allow for the complex and important issues to be addressed in a non-adversarial way. Central to resolving the issues raised are the twin issues of (i) the determination of pay and conditions in An Garda Síochána and (ii) the sensitive issue of the right to engage in industrial action, including an entitlement to strike. These two issues are inextricably linked and, although seeming somewhat intractable, addressing both at the same time provides the opportunity for a creative solution to be found. Accordingly, we outline immediately below the main elements of such a solution before proceeding to respond to the questions posed in the consultation paper.

A synthesis to resolve disputes on pay and conditions and limiting industrial action

The GRA recognises that strikes and industrial action are undesirable and has no desire to see industrial relations in An Garda Síochána based on a recurring need to threaten or resort to industrial action. For decades, the GRA has sought access for the Garda associations to collective bargaining institutions and processes on a par with trade unions. The Horgan Report recommended the “normalisation of industrial relations” in An Garda Síochána, including trade union status for the Garda associations. It has been GRA policy since 1993 that the option of trade union status be made available to members of An Garda Síochána. However, the terms under which trade union status might be implemented requires detailed consideration and planning and must not hold up the other elements of a normalisation process. Normalisation must include an entitlement by the Garda representative associations to engage in industrial action, including strikes. The GRA is cognisant that industrial action in a police force is a sensitive issue with important public policy considerations. Accordingly, the Association recognises the need to put in place robust agreed measures that would make industrial action unnecessary in return for limitations on any such action. The GRA is prepared to enter into negotiations to
voluntarily agree effective limitations on any industrial action subject to the following measures:

- The establishment of an agreed mid-level industrial relations mechanism in An Garda Síochána
- Access to the Workplace Relations Commission (WRC) and Labour Court
- The honouring of existing agreements and maintenance of established practice pending exhaustion of procedures
- A symmetrical binding acceptance of Labour Court recommendations
- Full and equal access to national public sector pay negotiations as of right
- The establishment of a Garda Remuneration Review Body (GRRB) to conduct a five-yearly review of (and address) pay and conditions, including any impact of Labour Court recommendations

The GRA sees the mechanism of a Registered Employment Agreement (identified in the Horgan Report) as an appropriate way to agree limitations on industrial action. It is recognised that such limitations would have to be comprehensive and effective. Incorporating them in a Registered Employment Agreement would have the benefit of giving legal effect to limitations and rendering them enforceable in the courts. The limitations on industrial action would operate for as long as the agreed measures are accepted and operated by Government and Garda management. As outlined in the Working Group’s consultation document, it is recognised that Government has certain responsibilities that it cannot waive, and a proposal, based on the existing conciliation and arbitration provisions that a motion be laid before the Dáil, is made below to accommodate this reality. However, exercise of the option must be balanced by the lapsing of any agreed restrictions on industrial action. Any agreed restrictions on industrial action would also need to lapse in the event of Garda management or Government:

- Not accepting or implementing a Labour Court recommendation
- Failing to implement a finding of the proposed GRRB
- Making unilaterally changes (without agreement) to terms and conditions of employment
- Failing to abide by other agreements on terms and conditions of employment

These conditions would allow freedom of action for Government while representing a truly symmetrical implementation of a requirement to be bound by the outcome of procedures. The GRA is prepared to engage with Garda management and Government on limitations to an entitlement to strike on the basis of such a symmetrical set of commitments.
2. RESPONSES TO THE CONSULTATION PAPER

Question 1: Do you think this reflects the full range of issues that should underpin any consideration of these matters?

Response

The GRA notes the four bullet points in the introduction to the Working Group’s consultation paper dated April 2017 and recognises a need to engage with these issues but finds the list too limited. The reference to the “welfare … of members…” is inadequate and too oblique to encompass the concerns of the GRA and its members. The list needs to be extended to explicitly reflect a more “rights-based” focus. This will allow for a stronger consideration of issues of concern to the GRA, which are actually largely recognised in the following questions in the consultation paper. The GRA considers that giving formal recognition and legal status to existing Conciliation Council agreements must be recognised as an underpinning requirement. This can be done by having the agreements registered with the Labour Court. The list would also benefit from giving attention to the issue of timing. While recognising the need for legislative action, the GRA is acutely aware of the likely delay from the legislative process. Accordingly, we suggest the following items be added to the range of issues that should guide consideration of matters:

- How to accord collective rights to members of An Garda Síochána and their representative associations
- How to mitigate delay in the process of changing the industrial relations framework for An Garda Síochána

Question 2: Do you agree that these are the key issues or are there other important issues that require consideration?

Response

A rights-based focus requires explicit attention to be given to an entitlement to organise collectively, bargain collectively (negotiation rights), provide access to State dispute resolution institutions and engage in industrial action on a par with other workers. Additionally, a rights focus implies the need to apply the EWTD to An Garda Síochána and to allow for Labour Court approval of a Working Time Agreement (WTA) between Garda management and the Garda representative associations. In this regard, the GRA notes that the European Commission’s Interpretable Communication on the Working Time Directive (Brussels, 26.4.2017 C (2017) 2601 final) states (p.10) that the Directive is applicable to the gardaí. The GRA would also refer to the commitment given to the High Court in October 2016 in Gaine and Harrington v Commissioner of An Garda Síochána to amend the Organisation of Working Time Act 1997 so as to include members of An Garda Síochána. Most crucially, if there are to be limits on industrial action as implied in the consultation paper, the implications of the limits on such rights for the determination of pay and conditions in An Garda Síochána need to be explicitly addressed. The GRA considers it essential that provision be made to take account of the principle of
the “special and unique nature of police work”. That the work of members of An Garda Síochána is “special and unique” has been acknowledged in successive reports, including the recent Horgan Report. Despite having been frequently enunciated, this principle has, to date, been little more than a platitud with no provision to give it practical effect. It is the view of the GRA that this can be addressed effectively only by establishing an appropriate independent institutional mechanism as set out in the “synthesis” section of the introduction to this submission. In advocating a sharper focus on rights, the GRA recognises that these rights create responsibilities. Accordingly, the entitlement to take industrial action is balanced by a proposal for voluntarily agreed robust limitations on this entitlement.

**Question 3: On what range of matters should access to the WRC and the Labour Court be provided?**

**Response**

The GRA considers that the Garda associations and their members should have full and unrestricted access to the WRC and the Labour Court for all normal industrial relations issues. We wish to draw particular attention to the need to apply the EWTD to An Garda Síochána and to extend the Organisation of Working Time Act 1997 to the members of the Force. At this stage, the GRA does not wish to indicate a definitive list of issues that might be excluded, but we do outline two areas in our response to Question 4 below.

The GRA would point out that its members already have access to the WRC and to the Labour Court on appeal under the Terms of Employment (Information) Act 1994, the Maternity Protection Act 1994, the Adoptive Leave Act 1995, the Parental Leave Act 1996, the Payment of Wages Act 1991 and the Employment Equality Acts 1998 to 2015. The Association is open to considering for exclusion any additional items that might be suggested by Garda management or the Department of Justice and Equality where the items do not impinge on terms and conditions of employment of Garda members. Of particular concern may be issues impinging on the operational effectiveness of An Garda Síochána and policy areas that are the preserve of Garda management or the Department of Justice and Equality. The Association would continue to expect appropriate consultation provisions in any such areas, including the maintenance of the current consultation mechanisms as provided for in the Memorandum of Understanding (MOU) and the Joint Protocol for Consultation and Dispute Resolution and any desirable agreed enhancement to same, these to be processed through a mid-level industrial relations mechanism (see responses to questions 7 and 8 below).

**Question 4: Are there certain matters which it would not be appropriate to bring before the WRC or the Labour Court?**

**Response**

The GRA considers that (i) discipline and dismissals that are not related to alleged discrimination under the terms of the Employment Equality Acts 1998 to 2015 and (ii) possibly certain operational aspects of a WTA regulating rosters and working
time, excluding those covered by the EWTD, are not appropriate to the WRC or Labour Court.

(i) Discipline and dismissals

The GRA recognises that An Garda Síochána is a disciplined force and that this carries with it a need for internal discipline but also effective protections to ensure that disciplinary and dismissal processes meet a high standard. The GRA does not see it as appropriate that the WRC or Labour Court should be involved in such matters. In particular, it does not consider the proposal in the Horgan Report that dismissals be dealt with under the Unfair Dismissals Acts 1977-2015 would meet the high standards required and currently provided for through the courts. The GRA is aware, however, that complaints relating to discipline and dismissal issues alleged to be due to gender, age, race, sexual orientation, disability, civil and family status, religion and membership of the Traveller community can be presented to the WRC pursuant to the Employment Equality Acts 1998 to 2015. Given that discrimination on most of these grounds is prohibited by European law (see Directives 2000/43/EC, 2000/78/EC and 2006/54/EC), the GRA considers it essential that such complaints continue to fall within the jurisdiction of the WRC and the Labour Court on appeal.

(ii) Rosters and working time

Full access to the WRC and Labour Court should, of course, be provided for disputes related to the length of the working day/week/year. Access to the Labour Court is also required for all issues covered by the EWTD. Removing the exclusion of An Garda Síochána from the Organisation of Working Time Act 1997 will have the benefit of allowing for the Labour Court to approve a collective agreement (a WTA) that applies certain terms of the EWTD. The GRA recognises that the existing 2012 WTA is unlikely to meet the requirements for Labour Court approval and it will need to be amended. This can best be done through direct negotiations with Garda management under the Westmanstown process. As with the 2012 WTA, this will need to allow for the EWTD to be applied in a way that meets the operational needs of the Force with derogations being granted to Garda management in return for equivalent protections. Revising the 2012 WTA to make it fully compliant with the Directive will allow for Labour Court approval of that agreement (subject, of course, to the terms of the Organisation of Working Time Act 1997 being extended to An Garda Síochána). The main benefit of the Westmanstown process is the level of expertise that has been built up and the non-adversarial way in which that forum has worked.

**Question 5:** If there are certain matters that would not be appropriate to the WRC or the Labour Court, what process should be put in place for such matters?

**Response**

*General principle*

It should be possible for Garda management and a Garda representative association (or future Garda trade union) to voluntarily agree to internal Garda specific dispute resolution processes. In certain cases, it may be desirable that the determination of
such a process would be binding on the parties involved and for the parties to agree in advance that a particular dispute or disputes would not be subject to referral to the WRC or Labour Court. This could apply where the parties to a dispute agree on an ad hoc basis that the Chairperson of an internal mid-level industrial relations body would make a binding decision on a matter in dispute. It might also be useful to have such an internal binding process in technical areas requiring detailed organisational knowledge, such as when adjudicating on the operation of certain aspects of a WTA. This would, of course, not include binding decisions on any aspect of the EWTD where access to the Labour Court and the law courts must be available. Access to State industrial relations institutions for disputes over the duration of the working week and roster design would also need to be available. While roster design issues are best dealt with through the Westmanstown process in the first instance, referral to the WRC and Labour Court should remain an option where agreement is not forthcoming.

**Discipline**

Discipline and dismissals, other than those alleged to be due to discrimination contrary to the Employment Equality Acts 1998 to 2015, should continue to be dealt with under current procedures. Any future revisions of these should be a matter for direct negotiations between the Garda associations and Garda management.

**Question 6: Neither the WRC or the Labour Court make decisions that are binding on parties; would it be appropriate in relation to An Garda Síochána to have a mechanism for making decisions that are binding on parties?**

**Response**

The GRA is open in *clearly defined and specific circumstances* to the principle of Labour Court decisions being binding. A binding provision must be realised in a rigorously fair manner. The proposal in the Horgan Report for binding Labour Court recommendations through the vehicle of a Registered Employment Agreement is seen as having merit. However, the specific suggestions in that report do not meet a test of fairness and do not deal with all circumstances. A Registered Employment Agreement that meets the following criteria would do so:

- Where a binding provision was symmetrical and applied to all parties equally, including Government
- Where there was a requirement that Labour Court recommendations must be fully implemented by Garda management. (As registered employment agreements are legally enforceable, it would seem this criterion can easily be met.)
- Where there was a provision for continued adherence and observation of existing agreements, including those in custom and practice, pending negotiation and agreement on change or the exhaustion of procedures and the issuing of a binding recommendation by the Labour Court
- Where there was an obligation on Government to either accept and fund the cost of Labour Court recommendations or reject recommendations under clearly defined circumstances
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- Where there was a sufficiently robust provision for a five-year review of pay and conditions in An Garda Síochána, including the effects of Labour Court recommendations

While the GRA sees merit in the mechanism of a Registered Employment Agreement, the binding requirements would have to extend to Government and relevant Government departments. The review provision would have to be much more substantive than that provided for in the Labour Relations Commission Code of Practice on Disputes in Essential Services (S.I. No. 1 of 1992), which the Association does not consider to be sufficiently robust. The GRRB proposal outlined in the introduction to this submission does hold out the promise of addressing the determination of pay and conditions and providing for a review of the effects of Labour Court recommendations. In the context of the establishment of a statutory GRRB, voluntary limitations on the right of Gardaí to engage in industrial action, including strikes, should then be provided for in a Registered Employment Agreement.

**Question 7: Are there elements of the current C&A Scheme that should be retained as an internal mechanism for consultation and dispute resolution?**

**Response**

In relation to conciliation, the Conciliation Council could be suitably adapted to provide for a mid-level industrial relations mechanism to deal with workplace issues (outside of national sectoral-level issues such as pay). This is one of two possible models that the GRA considers might be used; a Garda sector-specific Joint Industrial Council is the second possibility.

**Question 8: Are there amendments that could be made to the current C&A Scheme in terms of its composition, scope and procedures that would enhance its capacity for internal dispute resolution?**

**Response**

*Conciliation Council*

A reformed Conciliation Council could provide the mechanism for a mid-level industrial relations body. This would require a number of changes, including the following:

a) A removal of the current restrictions on the range of industrial relations issues that can be dealt with. Rosters and working time issues could be dealt with by the Westmanstown process, which is a sub-committee of the current Conciliation Council.

b) A clear delineation of any operational or policy issues that would come within the sole purview of Garda management and not be subject to referral to the Council.
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c) A delineation of issues to be reserved for national public sector-level negotiations.
d) Provision for Garda management to take a lead role at the Conciliation Council. While the GRA sees merit in retaining the current involvement of the relevant Government departments, this can be the subject of review and negotiation.
e) Enhanced decision-making powers for Garda management to conclude agreements at the Conciliation Council.
f) A provision to make agreements binding and enforceable.
g) A mechanism to prevent unilateral change to or breach of existing agreements and provide for redress in the event of such changes or breaches occurring.
h) Specified time limits for exhausting procedures to prevent excessive delay by any party.
i) Provision for the referral of issues to the WRC with the outcome – either agreement or failure to agree – referred back to the Conciliation Council where agreement is not reached.
j) Provision for any party to refer an issue at the Conciliation Council (following failure to agree at the WRC) to the Labour Court for a binding recommendation, such recommendation to be subject to a five-year review by the GRRB, as discussed below in response to Question 16.
k) An external independent chairperson with appropriate industrial relations experience and powers to promote agreement between the parties.

Arbitration
It is recognised that Government has financial and constitutional responsibilities for which it needs to provide. Currently the Garda C&A scheme provides that the Government may reject an arbitrator’s award by placing a motion to that effect before the Dáil within a specified time period. In the event that there was agreement on Labour Court recommendations being binding, an equivalent provision could be used to provide for the Government’s financial and constitutional responsibilities. It is also accepted that Government has the option of legislation (such as the FEMPI legislation) to unilaterally vary existing terms and conditions of employment. However, should Government exercise either of these options, any agreed restrictions on industrial action would, of course, lapse.

Question 9: If the C&A should not be retained, in either whole or part, what mechanisms should replace it?

Response

Replacing Conciliation Council with a Joint Industrial Council (JIC)
If there is no agreement on a revamped C&A scheme, an internal Garda Joint Industrial Council (G-JIC) could provide an alternative mid-level industrial relations
Appendix F1 Submissions from Garda Associations - GRA

model. While JICs are found largely in the commercial semi-state sector, there are some in the non-commercial sectors, such as the health sector. JICs comprise members of management and union representatives and have an independent chairperson with industrial relations experience, sometimes drawn from the State dispute resolution bodies. JICs are widely recognised as an effective forum for dealing with issues in-house and limiting the number of disputes progressing to State dispute resolution bodies. A G-JIC arrangement would require the following issues to be addressed:

a) A specification that all normal industrial relations issues can be dealt with (excluding discipline and dismissals and those rosters and working time issues covered by the Westmanstown process).

b) A clear delineation of any operational or policy issues that would come within the sole purview of Garda management and not be subject to referral to a G-JIC.

c) A delineation of issues to be reserved for national public sector-level negotiations.

d) The composition of a G-JIC – Garda management and the Garda representative associations. (It would be necessary to consider if departmental representatives could/should be involved in a G-JIC.)

e) Enhanced decision-making powers for management to conclude agreements.

f) A mechanism to require all parties to utilise and exhaust G-JIC procedures.

g) Specified time limits for exhausting procedures to prevent excessive delay by any party.

h) The completion of a Registered Employment Agreement to make agreements binding and enforceable.

i) Agreement to prevent unilateral change to agreements reached and provide for redress should it be alleged that such a change has occurred. (This can be achieved through an appropriately specified Registered Employment Agreement that would have legal effect.)

j) Provision for referral of issues to the WRC with the outcome – either agreement or failure to agree – referred back to the G-JIC where agreement is not reached.

k) Provision for any party to refer an issue at the G-JIC (following failure to agree at the WRC) to the Labour Court for a binding recommendation, such recommendation to be subject to a five-year review by the GRRB discussed below, as discussed below in response to Question 16.

l) An external independent chairperson with appropriate industrial relations experience and powers, perhaps drawn from the staff of the WRC, to promote agreement between the parties.

As can be seen, the requirements of either a revamped Conciliation Council or a G-JIC are similar. The main differences are that:
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- A revamped Conciliation Council has the advantage of familiarity while the G-JIC option may take longer for both Garda management and representative associations to adapt to.
- The terms of the revamped Conciliation Council scheme could be adapted as a mechanism to give the Garda associations formal access to the Labour Court at an early stage pending the passage of legislation to this effect.
- It would be possible to design a bespoke legislative provision to make agreements reached at conciliation legally binding. This is likely to take longer than the G-JIC option, which would provide a more immediate legally binding mechanism of a Registered Employment Agreement.
- It may be easier to accommodate continued involvement of Government departments in the Conciliation Council option.

Given its familiarity and the option to adapt the scheme to grant formal access to the Labour Court, the Conciliation Council option appears superior. It is the option favoured by the GRA subject to amendments to the Council’s operation being agreed and provided for.

Question 10: What amendments, if any, would enhance the draft Joint Protocol for Consultation and Dispute Resolution as a means of resolving disputes at the most appropriate level?

Response

The GRA notes that the most important agreement for processing employment-related issues is the existing MoU. The draft Joint Protocol for Consultation and Dispute Resolution seems to overlap with the MoU and has the potential to create confusion. Furthermore, the Joint Protocol does not provide for negotiation and is confined to consultation. This makes it unsuitable for dealing with industrial relations issues. Accordingly, the GRA proposes that the Joint Protocol be retained for issues solely requiring consultation and that it not deal with issues relating to terms and conditions of employment. Such issues would be dealt with under the terms of the MoU and, if not agreed, referred to the mid-level industrial relations mechanism that is to be agreed and adopted. In addition, the draft Joint Protocol should be reviewed by individual Garda representative associations and Garda management to make it more effective and efficient.

Question 11: Should the current legislative provisions that operate to constrain the taking of industrial action by An Garda Síochána be maintained?

Response

A focus on rights highlighted in response to Question 1 suggests such provisions should be repealed. This is necessary to bring Ireland into line with its international obligations following the 2014 decision in the case taken by the European
Confederation of Police (EUROCOP)\(^{28}\). The closeness or otherwise of the decision by the European Committee of Social Rights (ECSR) is not relevant. Ireland must meet its international obligations, specifically the right to take industrial action (including strike action) as provided for in Article 6.4 of the European Social Charter. The GRA would point out that the ECSR majority decision is supported by the decision of the Supreme Court of Canada in *Mounted Police Association of Ontario v Canada* [2015] SCC 1 to the effect that the guarantee of freedom of association protects not only “a meaningful process of collective bargaining” but also that the process requires “the ability of employees to participate in the collective withdrawal of services”. This requires repeal of the current legislative constraints on industrial action. However, as already outlined, it is recognised that extending the entitlement to engage in industrial action to An Garda Síochána is a sensitive and delicate issue and has serious public policy and security implications. As previously noted, the GRA sees merit in limiting the entitlement to take industrial action through the mechanism of a voluntary Registered Employment Agreement. The “synthesis” sub-section of the introduction to this submission outlines the principles of an integrated mechanism to allow for this.

**Question 12: If the current legislative position was to be amended, what form should such amendment take?**

**Response**

The most crucial amendment is that of section 8 of the Industrial Relations Act 1990 and the extension of the protections and obligations in that Act to members of An Garda Síochána, the existing Garda representative associations and any future Garda trade unions. Other restrictions that need to be lifted include section 9 of the Offences against the State Act 1939 and section 18 of the Garda Síochána Act 2005.

**Question 13: If the current legislative position was to be maintained, what other measures would be appropriate to be taken to reflect the impact of this on the capacity of the Garda Associations to advance the position of their members?**

**Response**

The current legislative position should not be retained. Given a rights-based perspective, the retention of restrictions on industrial action, including strike action, would be inappropriate. Neither can the GRA identify any measures that could take account of the impact on its members of the retention of the “current legislative position”.

\(^{28}\) The EUROCP case refers to the European Committee of Social Rights of the European Council case of the European Confederation of Police (EUROCOP) -v- Ireland Complaint No. 83/2012. For simplicity, it is referred to throughout as the EUROCP case.
Question 14: Should the Garda Associations be reconstituted as Trade Unions?

Response

The GRA’s view is that trade union status should be open to the Garda associations. However, whether or not an association chooses to exercise that option should be a decision solely for that association. Irrespective of whether or not a Garda association decides to exercise the option to become a trade union, there is an immediate requirement to clarify the legal status of the Garda associations and their right to engage in collective bargaining. The following is the rationale for the above positions.

Trade union status

In pursuit of “normalising industrial relations” in An Garda Síochána, the Horgan Report recommended that “members of AGS should have the right to join independent trade unions and that those unions should have the right to bargain collectively with their employer” (slide 63). This is to be welcomed if implemented in a considered way, but there are some contradictions in the report in the presentation of that particular recommendation.

It is suggested on slide 89 that “GRA and AGSI need to decide independently if they will become Trade Unions”. Allowing these two Garda associations to decide to become trade unions is, of course, the most appropriate way to proceed. However, there are two ambiguities in the presentation of the recommendation. First, the recommendation on slide 63 seems to allow for members of An Garda Síochána to join any independent trade union. It is desirable there be an examination of the possibility of limiting in the public interest the right to join a trade union to a right to join a trade union specific to An Garda Síochána. Second, it is desirable to avoid union multiplicity for particular grades. The limitations on forming new trade unions in the Industrial Relations Act 1990 may not be sufficient to deal with this, and it is desirable to consider enacting legislative provisions to deal with the possibility of a multiplicity of trade unions for the same grades, inter-union rivalry and poaching. This can be done by legislative provision confining recognition and negotiation rights to specific Garda trade unions specific to particular grades (see also response to question 18 below).

Regulating trade union status and membership

Article 40.6 of the Irish Constitution allows limitations to be placed on the right of association in the public interest. Thus the possibility of confining the right to join a trade union to a right to join a single trade union formed from the transition of an existing Garda association to a Garda trade union could be examined by the Working Group. However, the reasons for such a limitation would need to be very well founded because freedom of association operates both individually and collectively. If a Garda association secures trade union status, that is an implicit acceptance that individual gardaí have the right to join a trade union. If that choice is limited to the Garda union, their rights to freedom of association are denied: see National Union of Railwaymen v Sullivan [1947] IR 77 and decisions of the European Court of Human Rights (ECtHR) to similar effect. An alternative is to provide, in legislation, that only a Garda trade union can enjoy recognition and negotiation rights. It is established law that an employer is free to negotiate with one representative body and refuse to do so with another (see Association of General Practitioners v Minister for Health [1995] 1 IR 382), and it would be possible for this to be enshrined in
legislation. Naturally, there could be no suggestion that gardaí would be obliged to join a Garda trade union, i.e., membership would be voluntary.

**Preparation for trade union status**

The recommendation on slide 63 of the Horgan Report that “the GRA and AGSI should immediately plan to become registered trade unions…” goes too far and is impractical. The appropriate path would be for Government to introduce legislation to allow for trade union status but not to require it. A trade union is composed of its members and is not an organisation separate and distinct from them. The members will have to approve any change in status in accordance with that association’s rules and constitution. Any decision on trade union status will require very careful consideration of the issues involved and consultation with members in order to maximise the prospects of approval by members. This is likely to be a lengthy process requiring some years and a significant amount of preparatory work, such as seeking independent advice, including legal advice, and commissioning research. The need to take time to research and plan any move to trade union status should not, of course, delay the introduction of legislation that allows for trade union status or the right to bargain collectively.

**Possible delay**

While the GRA is convinced of the need for legislative provision to recognise and give effect to collective rights, it is acutely aware of the length of time such legislation might take. The current situation, whereby legislation is being subjected to protracted Dáil review by committees, is a matter of particular concern in this regard. For this reason, it is necessary to find ways to provide a bridging solution and expeditiously resolve current limitations on collective representation.

**Excepted body status**

Excepted body status is provided for in the Trade Union Act 1941 but it is not clear that the Garda associations are currently excepted bodies for the purposes of that Act; indeed, it would seem they are not. This casts doubt over the capacity of the Garda associations to engage in collective bargaining and conclude collective agreements. These lacunae should be corrected immediately by granting the Garda associations the status of excepted bodies and the full right to engage in collective bargaining. Granting excepted status and a right to conclude collective agreements can be done by way of Ministerial Order (see, for example, S.I. No. 101 of 1990, which confers excepted body status on the Irish Hospital Consultants Association). A right to engage in collective bargaining should, of course, include full access to negotiations on national public sector pay on an equal basis with trade unions. The ad hoc access to the WRC and Labour Court, which was accorded to the GRA in October–December 2016, is less than satisfactory, and legislation is required. Pending such legislation, there is a need to find a bridging mechanism to ensure the Garda associations have access to the Labour Court as of right. We have already drawn attention to the possibility of revising the application of the existing Garda C&A scheme to allow the Labour Court to deal with disputes not resolved at the Conciliation Council. A similar bridging mechanism needs to be identified to allow for access in the event of agreement not being reached at national public sector pay negotiations.
Possible ICTU membership
The GRA considers that there should be no impediment to either Garda representative associations or Garda trade unions having an entitlement to affiliate to a confederal body such as the Irish Congress of Trade Unions (ICTU). Membership of ICTU is something that the GRA would need to consider carefully. However, the Association notes that because ICTU regulates competition between member unions, membership would have the benefit of protecting against inter-union disputes and members being poached by non-Garda trade unions. This protection would be additional to that provided by the suggested limitation on recognition and negotiating rights identified above. It is desirable that Garda trade unions not be required to engage in all-out industrial action as part of any ICTU affiliation. The GRA considers that this can be achieved through consultation with ICTU and appropriate provisions within the Garda associations’ existing rules and the rules of any future Garda trade unions.

Question 15: If the Garda Associations were to be reconstituted as Trade Unions, are there aspects of Trade Union law that would be inappropriate or inimical to effective policing?

Response
The GRA believes that the only aspect of trade union law that might be considered inappropriate or inimical to effective policing would be the application of the Trade Union Act 1913, which allows trade unions to operate a political fund.

Question 16: Many of the additional benefits and protections associated with Trade Union status, over and above that already enjoyed by the Associations, relate to protections where industrial action arises; should the Garda Associations be reconstituted as Trade Unions if the current legislative provisions that operate to constrain the taking of industrial action by An Garda Síochána are to be maintained?

Response
Given the concerns raised above in relation to excepted body status, the right to bargain collectively and the right to associate with ICTU, the GRA questions the assertion that the benefits “over and above” those already enjoyed by the associations are largely confined to the area of industrial action. The question seems to suggest a possible trade-off between the retention of the current constraints on industrial action and reconstituting the Garda associations as trade unions. If this inference is correct, the GRA rejects the appropriateness of any such trade-off. However, it welcomes the recognition in the consultation paper that:

“given the need to avoid industrial disputes between law enforcement and their employers, the State, it is common practice in many jurisdictions to have some form of industrial relations mechanism, whether specific to law

29 There is no impediment to an excepted body being a member of ICTU. For example, Guinness Staff Union, an excepted body, is a member of ICTU.
enforcement or of a more general nature, in place to resolve disputes particularly those regarding pay and conditions.”

The proposal for binding Labour Court recommendations together with a five-yearly review conducted by a GRRB is consistent with the above practice identified in the consultation paper. The proposal is, in fact, designed to operationalise in an Irish context the principle of a trade-off between voluntarily agreed limitations on engaging in industrial action and compensating provisions for the determination of pay and conditions.

**Question 17:** If the Garda Associations were to be reconstituted as Trade Unions, would the continuing provision of financial support to them be appropriate or would normal Trade Union funding arrangement apply with support for matters like training in good industrial relations practices being provided separately?

**Response**

It is appropriate that the Working Group give consideration to financial support should a Garda association exercise an option to become a trade union. The ceasing of public funding could increase the perceived independence of Garda trade unions and remove the perception of any Garda management or departmental influence. On the other hand, it would mean a loss of income to the associations, which will need detailed consideration and discussion among the parties. Given that the need to change to trade union status derives from the previous legal impediment to same, there is a case for the reimbursement of costs associated with the process of preparing and planning for a change to trade union status. The costs of attempts at trade union mergers, whether successful or not, are reimbursed by the State under existing legislation. The change to trade union status by a Garda association is analogous, and it is equally appropriate that costs associated with preparing for the change and the change itself be reimbursed by the State. The GRA considers this should be provided for in legislation, thereby allowing for the Garda associations to have the option of trade union status.

**Question 18:** If the Garda Associations were not to be reconstituted as Trade Unions, should some of the requirements and protections, for example in relation to balloting, be provided for in legislation in relation to the Associations?

**Response**

The same requirements and protections should apply to Garda associations as would apply to a Garda trade union. This should include the requirements to ballot for industrial action in the Industrial Relations Act 1990. Because the EUROCP decision found that there was a requirement to extend a “right” to strike to the Garda associations but trade union status was not required, it is necessary to find a way of applying the relevant immunities in Irish law to the Garda associations. The obvious way to achieve this is to extend the immunities in S. 11, S. 12 and S. 13 in the

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30 See the Trade Union Act 1975 and the Industrial Relations Act 1990.
Appendix F1 Submissions from Garda Associations - GRA

Industrial Relations Act 1990 to the associations. It may be acceptable to require a longer notice of industrial action, such as four weeks.
Appendix F2 Submissions from Garda Associations - AGSI

F2. Submission from the Association of Garda Sergeants and Inspectors (AGSI)

Working Group on Industrial Relations Structures for An Garda Síochána

Consultation Paper

Response of the Association of Garda Sergeants & Inspectors
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Introduction

An Interdepartmental Working Group to advise the Government on the legislation that is required to provide the Associations representing Gardaí with access to the State industrial relations institutions was established by the Tánaiste and Minister for Justice Francis Fitzgerald.

This Interdepartmental group comprises of representatives from the Department of Justice, Department of Public Expenditure and Reform, Department of Jobs, Enterprise and Innovation and Garda Management. The Chairman is Mr. John Murphy.

AGSI understand the working group was established in December 2016. However we were not advised of its existence until January 2017 and we were not formally invited to engage with the group until 16th March 2017. The terms of reference of this working group were provided to AGSI at that meeting (Appendix 1). This is disappointing considering AGSI have been championing the need for Garda access to the WRC and Labour Court for many years.

The AGSI through the European Confederation of Police, (EuroCOP) took a case to the European Social Committee in 2011. This case alleged certain breaches of the European Social Charter. The resultant adjudication (December 2013) found that there were indeed breaches of:

- Article 5 of the Charter on grounds of the prohibition against police representative associations from joining national employees' organisations;
- Article 6 Sub Section 2 of the Charter on grounds of restricted access of police representative associations into pay agreement discussions;
- Article 6 Sub Section 4 of the Charter on grounds of the prohibition against the right to strike of members of the police

Since the delivery of this judgement AGSI have been striving to have this findings implemented but our attempts have been frustrated. The government agreed to have the matter looked at and addressed through the Review of An Garda Síochána committed to under the Haddington Road agreement. This review was not commenced and did not in fact take place until the appointment of Mr John Horgan in June 2016 with a reporting date of December 2016. This delivery date
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was more than two years after the review should have been completed. As a result of our campaign by AGSI for pay restoration and in the teeth of a withdrawal of labour by the Gardaí the Taoiseach Enda Kenny in the Dáil (2 November 2016) confirming that he has asked the Attorney General "to move as quickly as possible" to put the legal frameworks in place to allow Gardaí have access to the Workplace Relations Commission and the Labour Court.

The Labour Court in its recommendations of 3 November 2017 recognised that the parties (The AGSI and the Department of Justice) had not found a way of implementing what appears to be a shared commitment to develop the means for the AGSI to access the industrial relations institutions of the state (the WRC and the Labour Court). It recommended the parties work in the Garda Review then under way chaired by Mr. John Horgan and that legislation be implemented. However, the Horgan review failed to address this matter effectively and the matter remained unresolved.

It appears that following the Horgan Review the Tánaiste established the interdepartmental working group. Following its establishment AGSI was excluded. We perused the matter with the Tánaiste and Minister for Justice in January and February 2017 but were informed we would not be given a seat at the table. Subsequently and in response to a question in the Dail from Deputy John O'Callghan (30 March 2017) the Tánaiste committed to providing AGSI with access to the working group.

Regrettably we have been excluded from direct involvement in this aspect of the work of the group and our input is confined to a written submission.

AGSI have been asked to make a submission to the working group and were furnished with a series of questions.

AGSI also note that the working group will be examining point 2 and 3 of the terms of reference for reporting to the Minister by 31 October 2017. We have a commitment to face to face engagement at this working group for this element of its work. AGSI are committed to engaging proactively to develop the best and most effective model for dispute resolution for our members.

Before responding to the questions raised, AGSI wish to refer to the opening paragraphs of the consultation paper. The Working Group indicates that they will consider the views of the stakeholders and other matters as set out in the terms of reference viz international experience and norms, the decision of the Committee on Social Affairs in the EUROCOP case and the recommendations of the Horgan Report
AGSI are firmly of the view that the EUROCOP decision must be implemented in full. We are also of the view that the Horgan report failed in its brief in that it did not address that element of its terms of reference relating to; ‘The appropriate structures and mechanism for the future resolution of matters relating to pay, industrial relations and attendant matters.’ (Appendix 2) for full terms of reference) Accordingly this review cannot be relied on as a basis for changes to the IR process without more detailed engagement with the Associations.

We remain available to engage with the working group in relation to all aspects of the terms of reference in face to face discussions.

**Industrial Relations Equality**

AGSI seek unrestricted access to the industrial relations machinery and employment rights available to other workers. Essentially we are seeking industrial relations equality.

For the avoidance of doubt, the Association requires:

1. Unrestricted access to the WRC and the Labour Court for its members.
2. That the members of the Association will enjoy the same employment rights as all other workers in the State.

The Association has been requested to identify the changes which will be required in legislation to achieve the above objective. The Association recognises that the primary responsibility for the drafting and introduction of legislation is a matter for the legislature which has access to the necessary expertise in this area.

To assist the committee AGSI have set out below our observations on the matters raised in the consultation paper.

At the outset it must be pointed out that AGSI is seeking formal recognition of the right of the Association to participate directly in pay talks.

AGSI was previously excluded from direct participation in pay talks between the other Unions and the Government. While AGSI were invited to previous collective bargaining pay talks we were not given parity with other unions and effectively were required to accept the deals agreed in our absence. (Croke Park 1 and 2 and the Haddington Road agreements are cases in point). This situation has changed at the pay talks 2017 when an extension of the Lansdowne Road Agreement was being negotiated in June 2017. However, the Association’s right to participate has not been formally recognised in law and AGSI require this.
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Consultation Paper Issues

Moving to address the questions raised in the consultation paper. We remain disappointed that our consultation to date has been confined to written submissions. We would again reiterate our position that we should be engaged with on all aspects of this work.

Matter raised in Consultation Paper question 1

Analysis of the potential implications for
- an Garda Síochána as a single national police service, which deals with all aspects of policing matters including regular policing, state security and immigration control,
- the disciplined nature of the service and difficulties that could arise if members were to be directed by decisions of another entity which would not necessarily be constrained by concerns around the functions of An Garda Síochána,
- the imperative that the public perception of the impartiality of an Garda Síochána is not undermined, and
- the requirement for a fair mechanism through which matters affecting the welfare and efficiency of members are resolved.

Question 1: Do you think this reflects the full range of issues that should underpin any consideration of these matters?

AGSI Response

The scope of issues raised for consideration by the Working Group appears to be quite comprehensive in nature and relates to many of the fundamental matters to be addressed.

There is currently a “Code of Practice on Dispute Resolution (including Disputes in Essential Services) S.I No 1 of 1992). This is however not applicable to AGSI or our members or An Garda Síochána. AGSI would welcome engagement with the working group in developing protocols for An Garda Síochána in the future when we have access to the IR machinery available to other workers.

We would require clarification on what is meant or alluded to by the phrase, “members were to be directed by decisions of another entity.” (Bullet point 2 above).

AGSI agree it is an imperative that the public perception of the impartiality of An Garda Síochána is not undermined. AGSI look forward to contributing in the
Appendix F2 Submissions from Garda Associations - AGSI

working group to ensure that public confidence is maintained when we are provided with appropriate industrial relations access.

The Association is seeking ‘a fair mechanism through which matters affecting the welfare and efficiency of our members are resolved’. We see this as a fundamental right for our members. We welcome an analysis of this area and hope that it will deliver an operational model that is accessible, meets our needs and is capable of delivering an outcome on IR issues in a timely fashion. We have as an association signed up to the Garda internal ‘Joint Protocol for Consultation and Dispute Resolution’. We have already received a commitment from Garda Management that this document will be revisited once AGSI is given unrestricted access to the services of the WRC and the Labour Court.

We assume we will not be restricted to resolving matters of a welfare and efficiency nature only and that our access to the WRC and the Labour Court will also include all matters pertaining to the pay, emoluments/allowances and pension benefits of members of An Garda Síochána.
Matter raised in Consultation Paper questions 2

This document outlines 4 key issues that require consideration; these are:

- On what range of matters should access be provided to the Workplace Relations Commission (WRC) and Labour Court?
- What internal processes are required to be in place and be exhausted prior to issues being brought to the WRC, and, more generally?
- Should there be constraints on the Taking of Industrial Action by members of An Garda Síochána?
- Should the Garda Associations be reconstituted as Trade Unions?

Question 2: Do you agree that these are the key issues or are there other important issues that require consideration?

AGSI Response

AGSI are seeking unrestricted access to the WRC and Labour court to progress matters under dispute between the Association and Garda Management/Department of Justice. AGSI assume that all matters pertaining to the pay, emoluments/allowances and pension benefits of members of An Garda Síochána can be brought to these institutions and access will not be limited to “matters affecting the welfare and efficiency of members”. Clarification is sought on this matter and we would expect the would working group would guarantee that these matters will be included.

In light of recent events/controversies matters relating to disciplinary action and the Protected Disclosure Legislation have now become central issues of concern and will have to be addressed.

We are unclear as to whether the issues arising from other matters relating to Senior Garda Management/the current Inquiries and issues raised at the recent PAC hearings will require to be addressed. We would like clarification on the position of the working group on these matters.

AGSI are open to discussing and agreeing the internal process required to be in place and exhausted prior to issues being brought to the WRC. We believe the appropriate forum for this is in face to face meetings at the working group.

AGSI contend that we should be provided with the same rights and entitlements as all other workers.
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Matter raised in Consultation Paper question 3

On what range of matters should access be provided to the Workplace Relations Commission (WRC) and Labour Court?

Question 3: On what range of matters should access to the WRC and the Labour Court be provided?

AGSI Response

AGSI note that the consultation paper makes an observation that there are a number “of legislative provisions which would require amendment” to facilitate access on a full statutory basis. Evidently the working group have considered these legislative changes. AGSI have previously sought access to the research carried out by the working group. We again request sight of the research and your assessment of the anticipated legislative changes?

AGSI believe our members should have unrestricted access to the WRC and Labour Court in relation to all employment legislation.

Initial examination shows members have access to the WRC under the following legislation31 :-

5. Payment of Wages Act 1991; and

For example members of An Garda Síochána are included in the definition of “employee” as set out in the Payment of Wages Act 1991 – see below

“employee means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purpose of this definition, a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant...

31 Not an exhaustive list
Individual members of An Garda Síochána may likewise appeal to the Labour Court in cases of harassment. Its mediation service is utilised by the Garda Síochána as part of its bullying and harassment policy.

Members of An Garda Síochána are also entitled to make claims before the Equality Tribunal pursuant to the Employment and Equality Acts 1998 – 2011.

However, members have no rights under the Unfair Dismissals Act, 1977 (as amended). Internal discipline in An Garda Síochána, including demotion and dismissal, is dealt with under the Garda Síochána (Discipline) Regulations 2007 (as amended).

Members have no rights under the Industrial Relations Act (as amended). In particular the term “worker” in the Act excludes members of An Garda Síochána. As a consequence, members are not entitled to the statutory immunity or civil liability of workers who fall within the definition of “worker” under the Act.

The outline of the functions and role of the two statutory Dispute Resolution Bodies as outlined in the descriptive analysis of the consultation paper (pages 3/5) is not fully cognisant of the totality of their respective services/authority.

The recently established WRC now includes under its statutory remit:

- Advisory Services
- Conciliation Services
- Workplace Mediation Services
- Adjudication Services (including the former functions of the EAT and The Equality Tribunal).
- The Labour Inspectorate.

The AGSI would be of the strong view that we would have access to all of these services when and where appropriate. We would envisage that such access would be an essential aspect of any proposed legislation in regard to future negotiation rights. This is in fact the “de facto” situation as per our participation in the recent series of Public Service Agreements and the Labour Court recommendation.

AGSI would require an outline of which statutory provisions are involved. If the list of legislative provisions mentioned in footnote on page 2 on page 5 of the consultation is a comprehensive and complete list we would require confirmation of this fact.
Appendix F2 Submissions from Garda Associations - AGSI

We would not be amenable to separate matters being concilable and not arbitrable as we would expect matters going to Conciliation in the WRC would be capable of being referred to The Labour Court.

Clarity is required in matters relating to individual claims around such issues as disciplinary processes, minor claims, individual allowances, workplace relationships and other related matters and the potential access to the Adjudication Service/Workplace Mediation Service of the WRC. I attach for your information a list at appendix 3 showing all the adjudication services available through the WRC. AGSI would require clarification that our members will have full access to all these adjudication services.

We would require clarity also on access to the Health and Safety Authority in regard to the serious issues now arising in regard to our member’s health and safety in the performance of their day to day duties and the facilities afforded to them in exercising their statutory responsibilities and obligations.

In summary we believe all current matters, issues and range of conditions of employment should be included in any future statutory arrangements for access to the WRC and The Labour Court.
Appendix F2 Submissions from Garda Associations - AGSI

**Matter raised in Consultation Paper questions 4**

**Question 4:** Are there certain matters which it would not be appropriate to bring before the WRC or the Labour Court?

**AGSI Response**

We do not envisage any restrictions being placed on matters affecting our members and there not being amenable or capable of being processed and resolved either in the WRC/Labour Court.

**Matter raised in Consultation Paper questions 5**

**Question 5:** If there are certain matters that would not be appropriate to the WRC or the Labour Court, what process should be put in place for such matters?

**AGSI Response**

We believe all matters raised earlier in regard to the terms and conditions of all Garda ranks should be capable of internal resolution and if not, referred to the WRC/Labour Court.

**Matter raised in Consultation Paper questions 6**

**Question 6:** Neither the WRC or the Labour Court make decisions that are binding on parties; would it be appropriate in relation to An Garda Síochána to have a mechanism for making decisions that are binding on parties?

**AGSI Response**

In the case of the Labour Court, whereas, the majority of the Courts’ Recommendations are voluntary, there is statutory provision for binding arbitration in certain circumstances.

The current LRA Extension Agreement makes similar provision under Section 7.

This matter requires further debate. In common with other staff associations/trade unions the issue of binding arbitration is quite controversial. A process of voluntary binding arbitration is a feature of current Public Service Agreements.
AGSI believe the “Code of Practice on Dispute Resolution (including Disputes in Essential Services) S.I No 1 of 1992 [Appendix 4]) could be considered further in this regard.

*Matter raised in Consultation Paper questions 7 - 9*

What internal processes are required to be in place and be exhausted prior to issues being brought to the WRC, and, more generally?

**Question 7:** Are there elements of the current C&A Scheme that should be retained as an internal mechanism for consultation and dispute resolution?  
**Question 8:** Are there amendments that could be made to the current C&A Scheme in terms of its composition, scope and procedures that would enhance its capacity for internal dispute resolution?  
**Question 9:** If the C&A should not be retained, in either whole or part, what mechanisms should replace it?

*AGSI Response*

Yet again it is important to reiterate that AGSI believe the appropriate process for addressing all issues in this document in by way of full engagement with the working group. Whereas, the list of issues covered in the current C&A Scheme are generally considered to be extensive and comprehensive in scope and nature, the unilateral decisions made by Government in 2009 and incorporated in the FEMPI legislation and our earlier experiences in the Croke Park Agreement which followed, effectively led to the suspension of the C&A Scheme for the last 8 years.

AGSI are open to the consideration of restoring a more robust and fast track internal disputes resolution process at Garda Association/Garda Management/Departments of Justice and Public Expenditure and Reform in order to resolve issues on a mutual basis at the internal stages of any potential matter pertaining to our members conditions of employment.

AGSI are aware that other State Bodies/Companies have such structures, chaired by an independent IR expert. Such structures have onward reference to the WRC/Labour Court if resolution is not reached or agreed.

AGSI believe if such structures are sufficiently resourced and there is positive “buy in” they have a serious potential to resolve many of the issues which could potentially arise.
The inadequacies of the C&A scheme have been highlighted by the AGSI over the course of many years. Not lest the:

- The political appointment of the chair
- The protracted nature with which claims are progressed\(^\text{32}\)
- The absence of an Arbitration process over a protracted period of years

The dysfunctionality of the process has been identified by many commentators and Horgan in his review of An Garda Síochána stated

> “In the sense that there is any ‘system’ of industrial relations it can be described as anarchical, in that it is disordered and is without defined rules of engagement. It is not working and both sides are dissatisfied with it. Neither is it meeting the public’s need for a dependable national police and security service. Furthermore, it does not meet the requirements of the “EuroCOP” decision. European Confederation of Police (EuroCOP) –v- Ireland Complaint No. 83/2012”

The Association is open to further discussions on these matters in the working group.

\(^{32}\) 2004 (290) An allowance on behalf of members of this Association attached to the Legal Section Crime Policy and Administration Garda Headquarters and the Legal Section H.R.M. in line with the allowance paid to analysts and instructors.
Matter raised in Consultation Paper questions 10

**Question 10:** What amendments, if any, would enhance the draft Joint Protocol for Consultation and Dispute Resolution as a means of resolving disputes at the most appropriate level?

**AGSI Response**

AGSI have already contacted Garda Management with a view to conducting a review of this document in light of ongoing developments.

AGSI are available and will engage proactively with Garda Management in a complete review of these protocols and establish what changes amendments or enhancements can be considered at any point.
Appendix F2 Submissions from Garda Associations - AGSI

Matter raised in Consultation Paper questions 11, 12, 13

Should there be constraints on the Taking of Industrial Action by members of An Garda Síochána?

**Question 11:** Should the current legislative provisions that operate to constrain the taking of industrial action by An Garda Síochána be maintained?

**Question 12:** If the current legislative position was to be amended, what form should such amendment take?

**Question 13:** If the current legislative position was to be maintained, what other measures would be appropriate to be taken to reflect the impact of this on the capacity of the Garda Associations to advance the position of their members?

**AGSI Response**

AGSI contend that we should have the same industrial relations entitlements as all other workers.

AGSI seeks the implementation of the decision of the European Committee of Social Rights in respect of the complaint European Confederation of Police (EuroCop) v. Ireland Complaint No. 83/2012.

This decision dealt with a number of complaints including an alleged violation of Article 6 of the European Social Charter regarding the right to strike of members of An Garda Síochána. Article 6 of the Charter provides as follows:-

**Article 6 – The right to bargain collectively**

“Part I: All workers and employers have the right to bargain collectively.”

“Part II: With a view to ensuring the effective exercise of the right to bargain collectively, the parties:

Recognise:

4. The right of workers and employers to collective action in cases of conflicts of interests, including the right to strike, subject to obligations that might arise out of collective agreements.”

The committee had to resolve the question as to whether a prohibition on the right to strike by members of An Garda Síochána, as a means of pursuing a legitimate aim was necessary in a democratic society. The committee noted that the Government justified the prohibition on the basis that
“precluding the Gardaí from striking is strictly necessary in pursuit of legitimate purposes”, by arguing that Ireland “has only one “police force”, that it relies upon the Gardaí to perform functions that might not be performed by the police force in other jurisdictions in the context of immigration control” and that it “relies upon the Gardaí for policing and for state security more generally”.

The committee noted that the arguments made by the Government did not demonstrate the existence of a concrete pressing social need. Furthermore, the committee observed that

“the Government has not justified that the legitimate purpose of maintaining national security may not be achieved by establishing restrictions on the exercise of the right to strike... rather than by imposing an absolute prohibition.”

The committee concluded that Section 8 of the Industrial Relations Act 1990 not only amounted to a restriction but to a complete abolition of the right to strike.

The committee held that

“restrictions on human rights must be interpreted narrowly. As a consequence, in the context of the regulation of the collective bargaining rights of police offers, states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified... as distinct from the imposition of restrictions as to the mode and form of such strike action.”

The committee concluded that Section 8 of the Industrial Relations Act 1990 was not proportionate

“to the legitimate aim pursued and accordingly is not necessary in a democratic society.”

The committee consequently held that the prohibition on the right to strike amounted to a violation of Article 6.4 of the Charter.

Section 10 of the Industrial Relations Act 1990 provides that “workers” covered by the Act with statutory criminal immunity and civil liability in relation to strike action in certain circumstances.

The term “worker” is defined in Section 8 of the above Act as follows:-

“Any person who is or was employed whether or not in the employment of the employer with whom a trade dispute arises, but does not include a member of the Defence Forces or of the Garda Síochána,”
Section 10 of the above Act provides “workers” covered by the Act with statutory criminal immunity and civil liability in relation to strike action in certain circumstances. Members of An Garda Síochána are specifically excluded from the definition of “worker”.

Section 9(2) of the Offences against the State Act provides:

“Every person who shall incite or encourage any person employed in any capacity by the State to refuse, neglect, or omit (in a manner or to an extent calculated to dislocate the public service or a branch thereof) to perform his duty or shall incite or encourage any person so employed to be negligent or insubordinate (in such a manner or to such extent as aforesaid) in the performance of his duty shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years”

Sub-section (3) provides that every person who attempts to do anything the doing of which is a misdemeanour under either of the foregoing sub-sections or who aids or abets or conspires with another person to do any such thing “shall be guilty of a misdemeanour and shall be liable on conviction therefor to imprisonment for a term not exceeding twelve months”. This imposes criminal liability on the persons inducing or inciting the public sector workers. The acts envisaged range from those calculated to dislocate the public service to far lesser acts which may have that effect or a branch thereof. The wrongdoings by the person employed are wide-reaching, stemming from refusal and neglect, to negligence or insubordination.

It is a misdemeanour under Section 59 of the Garda Síochána Act 2005 to induce any member of An Garda Síochána to withhold his services or to commit a breach of discipline and to incite any person subject to military law to refuse to obey lawful orders from a superior officer or to refuse to perform any of his duties or to commit any other act in dereliction of his duty.

The legislative reforms necessary to remove the prohibition on the right to strike include inter alia:

(a) Amendment of the Industrial Relations Act 1990 (as amended) and any Statutory Instruments made pursuant to this Act. In particular, the definition of “worker” in Section 8.

(b) Amendment of the Offences against the State Act 1939, Section 9. This section provides that it is an offence for any person to encourage a person
employed by the State to refuse, neglect or omit to perform their duty in a manner calculated to dislocate the public service or branch thereof.

(c) Amendment of the Garda Síochána Act 2005. Section 59 provides that it is an offence for any person to induce a member of the Garda Síochána to withhold his or her service or to commit a breach of discipline.

(d) Amendment of the Garda Síochána (Discipline) Regulations 2007. The Schedule to the Regulations refers to a breach of discipline by a member who obstructs the operation or implementation of official policy or disobeys an order from a senior officer.

In summary AGSI note that Trade Unions are governed by both the terms of the 1941 Act and more recently by the Industrial Relations Act 1990. Both immunities and obligations are contained in the 1990 Act, as are balloting procedures and the authority of union executives in this regard. The earlier Code of Practice referred to has some significant observations on this issue, particularly in Sections 3/5/6 of that Code.

AGSI are prepared to engage with the working group to discuss all aspects of current legislation and the changes necessary to provide us with the same entitlements as other workers and which delivers on the judgement of the European Committee of Social Rights in respect of the complaint European Confederation of Police (EuroCop) v. Ireland, Complaint No. 83/2012.

AGSI notes that the consultation document refers to the situation regarding police forces in the UK, New Zealand and Australia. AGSI would be of the view that the experiences of countries in the E.U. should be considered also, as well as that of Canada where a very relevant and active debate is in progress on related issues in the Canadian Parliament.
Matter raised in Consultation Paper Q 14 - 18

Should the Garda Associations be reconstituted as Trade Unions?

**Question 14:** Should the Garda Associations be reconstituted as Trade Unions?

**Question 15:** If the Garda Associations were to be reconstituted as Trade Unions, are there aspects of Trade Union law that would be inappropriate or inimical to effective policing?

**Question 16:** Many of the additional benefits and protections associated with Trade Union status, over and above that already enjoyed by the Associations, relate to protections where industrial action arises; should the Garda Associations be reconstituted as Trade Unions if the current legislative provisions that operate to constrain the taking of industrial action by An Garda Síochána are to be maintained?

**Question 17:** If the Garda Associations were to be reconstituted as Trade Unions, would the continuing provision of financial support to them be appropriate or would normal Trade Union funding arrangement apply with support for matters like training in good industrial relations practices being provided separately?

**Question 18:** If the Garda Associations were not to be reconstituted as Trade Unions, should some of the requirements and protections, for example in relation to balloting, be provided for in legislation in relation to the Associations?

**AGSI Response**

The working group was tasked with identify legislative changes necessary to allow the drafting of the heads of Bill to give the Associations access to the WRC and the Labour Court. It is important to reiterate again at this point that the Tánaiste and Minister for Justice Francis Fitzgerald committed to providing AGSI access to the working group and we require that access to address relevant matters for this Association, including those set out in this consultation paper.

AGSI believe this issue of trade union status requires careful deliberation and discussions with the Staff Associations in line with the Tánaiste’s commitment. AGSI are prepared to engage with the working group on these specific matters which are of the utmost importance and which we believe merit discussion within the group to be fully explored.

AGHSI believe it would be more appropriate for working group to enter into discussions with this Association around what aspects of trade union law they feel is inappropriate or inimical to effective policing. In this regard AGSI would welcome the opportunity to participate in the working group to develop these ideas with the group.
Appendix F2 Submissions from Garda Associations - AGSI

It is difficult to consider answering question 16 in isolation from the other questions in this section. In this regard the working group should convene with the Association where these matters can be adequately debated and considered.

Once again the issue of the Association funding into the future is dependent on its status and therefore can only be decided when other matters are decided. It would be premature to consider this until the working group engages with AGSI.

AGSI would welcome full engagement with the working group in relation to the requirements and protections which should be provided for in legislation if the Association were not to be reconstituted as an association.

There are considerations in developing the “Excepted Body” status and concept as exists in Part 2 of the Trade Union Act 1941. AGSI believe this is a matter that would form part of any engagement with the Association.

The questions raised above must be considered generally in open discussion within the working group. AGSI believe that there is a need now for the working group to deliver on the commitment of the Tánaiste. AGSI should be invited to sit as a full partner on this group were we will make further and detailed submissions on all aspects of the matters under consideration in this document by the group.
AGSI Other Matters

The AGSI request also that we would receive clarity from the Working Group and the Government in relation to the Private Members Bill ‘Trade Union (Garda Siochana and the Defence Forces) Bill 2017’ and the views being taken in response to the provisions of this Bill.

On April 13th 2017, the Government consented to the Bill being introduced in Private Members’ time.
Appendix 1: Draft Working Group Terms of Reference
Industrial Relations Structures for An Garda Síochána

Draft Working Group Terms of Reference

Industrial Relations Structures for An Garda Síochána

In pursuance of the Government Decision S180/20/10/2108 of 20/12/2016 regarding legislation to provide the Garda Representative Associations with access to the State industrial relations institutions, to consider, having regard to (a) international experience and norms, (b) the decision of the Committee on Social Affairs in the EUROCOP case and (c) the recommendations in the Horgan Report:

(4) how the decision to grant access to the Workplace Relations Commission and the Labour Court to the Garda Associations may be given effect to, including such legislation as may be required, and in that context
(i) the status of the Garda Associations established under the Garda Síochána Acts and the related question of the constraints on members taking industrial action;
(ii) the meaning of access in terms of the matters for which access is to be given and the requirement to exhaust internal processes;
(iii) whether normal trade union rules and procedures, that currently do not apply to the Garda Associations and which bring discipline and certain constraints to trade union activity, should apply, and any mechanisms that might be required to achieve same;

(5) how industrial relations should operate in An Garda Síochána when the Garda Associations have been given access to the WRC and Labour Court, having regard to the historic roles of the Ministers of Justice and Equality and Public Expenditure and Reform and Garda Management in this regard, and

(6) the resource and related issues that will arise for both the WRC/Labour Court and An Garda Síochána.

And to report to the Tánaiste and Minister for Justice and Equality and the Minister for Jobs, Enterprise and Innovation in relation to (1) by 31 May 2017 and in relation to (2) and (3) by 31 October 2017.
Appendix 2: Terms of Reference of the Review of An Garda Síochána under Haddington Road Agreement

To build upon the progress already made in the Public Service Agreement 2010-2014, a Review of An Garda Síochána will be undertaken. The following terms of reference will apply.

To review and make recommendations on the use by An Garda Síochána of the resources available to it, with the objective of achieving and maintaining the highest levels of efficiency and effectiveness in its operation and administration.

The review shall encompass all aspects of the operation and administration of the Garda Síochána including:

- The structure, organisation and staffing of the Garda Síochána;
- The deployment of members and civilian staff to relevant and appropriate roles;
- The remuneration and conditions of service of members of An Garda Síochána including an evaluation of annualised hours/shift pay arrangements;
- The appropriate structures and mechanism for the future resolution of matters relating to pay, industrial relations and attendant matters.
Appendix 3: Adjudication Services

Adjudication Officers of the Workplace Relations Commission (WRC) are statutorily independent in their decision making duties as they relate to adjudicating on complaints referred to them by the WRC Director General.

The Adjudication Officer’s role is to hold a hearing where both parties are given an opportunity to be heard by the Adjudication Officer and to present any evidence relevant to the complaint. Hearings of the Workplace Relations Commission are held in private. However, complaints may, in certain instances, be disposed of by means of written procedure (i.e. without hearing). The Adjudication Officer will not attempt to mediate or conciliate the case. Parties may be accompanied and represented at hearings by a trade union official, an official of a body that, in the opinion of the Adjudication Officer, represents the interests of employers, a practicing barrister or practicing solicitor or any other person, if the Adjudication Officer so permits.

The Adjudication Officer will then decide the matter and give a written decision in relation to the complaint. The decision, which will be communicated to both parties and published, may, in general

a. declare whether the complainant’s complaint was or was not well founded,
b. require the employer to comply with the relevant provision(s),
c. require the employer to make such redress as is just and equitable in the circumstances including an award of compensation.

A party to a complaint may appeal to the Labour Court from a decision of an Adjudication Officer.

The redress that may be granted by an Adjudication Officer in the case of the different areas of employment and equality legislation is set out below.

<table>
<thead>
<tr>
<th>Act</th>
<th>Section or Regulation</th>
<th>Contravention</th>
<th>Redress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial Relations Act 1946</td>
<td>42, 43, 44, 45</td>
<td>Contravention of an Employment Regulation Order</td>
<td>May require the employer to comply with the relevant Employment Regulation Order and make an award of</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
<td>Redress</td>
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<td>compensation not exceeding 2 years’ remuneration</td>
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<td></td>
<td>Minimum Notice and Terms of Employment Act 1973</td>
<td>4(2), 5, 6</td>
<td>Failure to give minimum notice; failure to grant the employee’s rights during a period of notice; failure to give notice to employer. Compensation for any loss sustained by reason of the contravention (Sections 4(2) and 5); such directions as are considered appropriate.</td>
</tr>
<tr>
<td></td>
<td>Protection of Employment Act 1977</td>
<td>9 and 10</td>
<td>Failure of employer to consult with employees representatives where collective redundancies are proposed; failure of employer to provide information to employees’ representatives in relation to proposed redundancies Requiring the employer to comply with Section 9 or 10 and/or pay compensation not exceeding 4 weeks’ pay</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
<td>Redress</td>
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<tr>
<td>Unfair Dismissals Acts</td>
<td>3, 4, 5, 6</td>
<td>Unfair dismissal</td>
<td>May include re-instatement of the employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal; re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances; if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation (not exceeding 104 weeks remuneration)</td>
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<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<td>Protection of Employees (Employers’ Insolvency) Acts 1984 to 2012</td>
<td>6, 7</td>
<td>Failure to pay entitlements under the Insolvency Scheme (e.g. arrears of wages, sick pay, holiday pay and pay in lieu of notice, payments on foot of adjudication decisions or mediation resolutions)</td>
<td>Direction to pay the amount due to the employee.</td>
</tr>
<tr>
<td>Pensions Act 1990</td>
<td></td>
<td>Non-compliance of any rule of an occupational benefit scheme, other than an occupational pension scheme, with the principle</td>
<td>An order requiring that the principle of equal pension treatment be complied with; an order to take a specified course of action; an order for</td>
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<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<td>of equal treatment; non-compliance of any term of a collective agreement, employment regulation order or contract of employment, insofar as it relates to occupational benefits, with the principle of equal treatment; non-compliance with the principle of equal treatment in relation to the manner in which an employer affords his/her employees access to an occupational benefit scheme.</td>
<td>compensation for acts of victimization.</td>
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<tr>
<td>Payment of Wages Act 1991</td>
<td>5</td>
<td>Illegal deduction from wages</td>
<td>A direction to the employer to pay compensation of an amount not exceeding the net wages that</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<td>would have been paid in the week preceding the deduction/payment or, if the deduction/payment is greater than the latter, twice that amount.</td>
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<td></td>
<td>Terms of Employment (Information) Act 1994</td>
<td>3, 4, 5 and 6</td>
<td>Failure of employer to provide a written statement of terms of employment, to provide, prior to departure, a written statement of terms of employment when required to work outside the state, to notify the nature and date of a change to the terms of employment or to furnish a statement at the request of an employee, who has an existing contract of</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
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<tr>
<td>Maternity Protection Act 1994</td>
<td>Parts II, III or IV</td>
<td>Entitlements in relation to maternity leave, return to work, etc.</td>
<td>May include directions in relation to the grant of leave and the award of compensation not exceeding 20 week’s remuneration.</td>
</tr>
<tr>
<td>Adoptive Leave Act 1995</td>
<td>Parts II, III</td>
<td>Failure to grant the adoptive parent’s entitlements</td>
<td>May include directions to the parties to resolve the matter and the award of compensation not exceeding 20 week’s remuneration.</td>
</tr>
<tr>
<td>Protection of Young Persons (Employment) Act 1996</td>
<td>17</td>
<td>Penalisation of an employee for having in good faith opposed an unlawful act under the 1996 Act.</td>
<td>May include directions to take a specified course of action and the award of compensation.</td>
</tr>
<tr>
<td>Transnational Information and Consultation of</td>
<td>17</td>
<td>Penalisation of an employee because of</td>
<td>May include directions to take a specified course of action</td>
</tr>
<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<tr>
<td>Employees Act 1996</td>
<td></td>
<td>his/her status as an employee representative; failure of employer to provide reasonable facilities to representatives</td>
<td>action and the award of compensation.</td>
</tr>
<tr>
<td>Organisation of Working Time Act 1997</td>
<td>6(2), 11 to 23 and 26</td>
<td>Failure to grant rest periods, annual leave, public holiday entitlements, information relating to working time or zero hours practices and pay for leave and public holidays on cessation of employment; penalization of employee; failure to grant compensatory rest or breaks.</td>
<td>May require the employer to comply with the relevant provision and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Parental Leave Act 1998 and European</td>
<td>Parts 11, III of 2000 Act and</td>
<td>Failure to grant the parent’s entitlements</td>
<td>May specify the grant of parental leave, the award of</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<tr>
<td>Communities (Parental Leave) Regulations 2000</td>
<td>Regulation 8 of the 2000 Regulations</td>
<td>under the 1998 Act</td>
<td>compensation not exceeding 20 weeks’ remuneration or both.</td>
</tr>
<tr>
<td>Protections for Persons Reporting Child Abuse Act 1998</td>
<td>4(1)</td>
<td>Penalising an employee for having reported child abuse.</td>
<td>May require the employer to comply with the relevant provision, take a specified course of action and make an award of compensation not exceeding 104 weeks’ remuneration</td>
</tr>
<tr>
<td>Employment Equality Acts 1998 to 2011</td>
<td>Parts II, III and IV of 1998 Act (as amended)</td>
<td>Discrimination, victimisation, dismissal in circumstances amounting to discrimination or victimization; failure to pay equal remuneration; non-receipt of benefits under an equality clause.</td>
<td>Compensation, an order for equal remuneration, order for equal treatment, order to take a specified course of action, order for re-instatement or re- engagement with or without compensation</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<tr>
<td>Equal Status Acts 2000 to 2004</td>
<td>Part II</td>
<td>Discrimination against, or sexual harassment or harassment of, or permitting the sexual harassment or harassment of, a person in contravention of the Equal Status Acts.</td>
<td>Compensation; order to take a specified course of action</td>
</tr>
<tr>
<td>National Minimum Wage Act 2000</td>
<td>14</td>
<td>Failure to pay the correct pay entitlement under the 2000 Act</td>
<td>May include a direction to the employer to pay arrears and the expenses of the employee in connection with the dispute; may require the employer to rectify the contravention and pay any amount in respect of which the employer is in contravention.</td>
</tr>
<tr>
<td>Carer’s Leave Act 2001</td>
<td>6(1), 6(5), 6(6)</td>
<td>Failure to grant entitlement to carer’s leave,</td>
<td>May specify the grant of carer’s leave, the award of compensation not</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<tr>
<td>Prevention of Corruption (Amendment) Act 2001</td>
<td>8A(5)</td>
<td>Penalisation of an employee for reporting offences under Prevention of Corruption Acts 1889 to 2010.</td>
<td>May require the employer to take a specified course of action and make an award of compensation not exceeding 104 weeks’ remuneration</td>
</tr>
<tr>
<td>Protection of Employees (Part-Time Work) Act 2001</td>
<td>9 and 15</td>
<td>Treating a part-time employee, in respect of his or her conditions of employment, in a less favourable manner than a comparable full-time employee; penalisation of employee</td>
<td>May require the employer to comply with the relevant provision and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Competition Act 2002</td>
<td>50(3)</td>
<td>Penalisation of employee for reporting breaches of the 2002 Act</td>
<td>May require the employer to comply with Section 50(3), take a specified course of action and make an award of compensation not</td>
</tr>
<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<td>Treating a fixed-term employee, in respect of his or her conditions of employment, in a less favourable manner than a permanent employee; failure of employer to comply with provisions concerning successive fixed-term contracts; failure of employer to provide a written statement; failure to provide information on vacancies and training opportunities; penalisation of employee</td>
<td>May require the employer to comply with the relevant provision, to reinstate or reengage the employee (including on a contract of indefinite duration) and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Protection of Employees (Fixed-Term Work) Act 2003</td>
<td>6, 13</td>
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<tr>
<td>Industrial Relations</td>
<td>8</td>
<td>Victimising an employee on</td>
<td>May direct that the conduct which is the</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
<td>Redress</td>
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<tr>
<td>(Miscellaneous Provisions) Act 2004</td>
<td></td>
<td>account of the employee being or not being a member of a trade union or an excepted body or the employee engaging or not engaging in any activities on behalf of a trade union or an excepted body</td>
<td>subject of the complaint should cease and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Health Act 2004</td>
<td>55M(1)</td>
<td>Penalisation of an employee for making a protected disclosure under the Health Acts.</td>
<td>May require the employer to comply with the relevant provision, take a specified course of action and make an award of compensation</td>
</tr>
<tr>
<td>Safety, Health and Welfare at Work Act 2005</td>
<td>27</td>
<td>Penalisation of an employee for performing duties, etc under the Health and Safety Acts</td>
<td>May require the employer to take a specified course of action and make an award of compensation</td>
</tr>
<tr>
<td>Employment Permits Act 2006</td>
<td>26(3)</td>
<td>Penalisation of an employee for</td>
<td>May require the employer to take a</td>
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<td>Appendix F2 Submissions from Garda Associations - AGSI</td>
<td></td>
<td>making a complaint or giving evidence in proceedings under the Employment Permits Act 2006.</td>
<td>specified course of action and make an award of compensation</td>
</tr>
<tr>
<td>Employees (Provision of Information and Consultation) Act 2006</td>
<td>13</td>
<td>Penalisation of an employee for performing his/her functions under the 2006 Act.</td>
<td>May require the employer to take a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Consumer Protection Act 2007</td>
<td>87(3)</td>
<td>Penalisation of an employee for reporting breaches of the 2007 Act.</td>
<td>May require the employer to comply with the relevant provision, take a specified course of action and make an award of compensation</td>
</tr>
<tr>
<td>Chemicals Act 2008</td>
<td>26(1)</td>
<td>Penalisation of an employee for reporting breaches of the 2008 Act.</td>
<td>May require the employer to comply with the provision, take a specified course of action and</td>
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<td>Section or Regulation</td>
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<tr>
<td>Charities Act 2009</td>
<td>62(1)</td>
<td>Penalisation of an employee for reporting breaches of the 2009 Act</td>
<td>make an award of compensation not exceeding 104 weeks’ remuneration</td>
</tr>
<tr>
<td>National Asset Management Agency Act 2009</td>
<td>223(3)</td>
<td>Penalisation of an employee for making a complaint or giving evidence in proceedings under the 2009 Act.</td>
<td>May require the employer to comply with the provision, take a specified course of action and make an award of compensation not exceeding 104 weeks’ remuneration</td>
</tr>
<tr>
<td>Inland Fisheries Act 2010</td>
<td>38(1)</td>
<td>Penalisation of an employee for making a complaint or giving evidence in proceedings under the 2010 Act.</td>
<td>May require Inland Fisheries Ireland to take a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<tr>
<td>Criminal Justice Act 2011</td>
<td>20(1)</td>
<td>Penalisation of an employee for disclosing information relating to relevant offences</td>
<td>May require the employer to take a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Property Services (Regulation) Act 2011</td>
<td>67(5)</td>
<td>Penalisation of an employee for reporting improper conduct under the 2011 Act</td>
<td>May require the employer to take a specified course of action and make an award of compensation not exceeding 104 weeks’ remuneration</td>
</tr>
<tr>
<td>Protection of Employees (Temporary Agency Work) Act 2012</td>
<td>6, 11, 13(1), 14, 23, 24</td>
<td>Failure to give an agency worker his/her basic working and employment conditions; failure to advise of vacancies; the charging of a fee to an employee by an agency for arranging employment; failure to provide the same</td>
<td>May require the employer to take a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
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<tr>
<td>Further Education and Training Act 2013</td>
<td>35(1)</td>
<td>Penalisation of an employee for making a complaint or giving evidence in proceedings under the 2013 Act.</td>
<td>May require the employer to take a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Central Bank (Supervision and Enforcement) Act 2013</td>
<td>41(1)</td>
<td>Penalisation of an employee for making a protected disclosure under the 2013 Act.</td>
<td>May require the employer to take a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>Protected Disclosure Act 2014</td>
<td>12(1)</td>
<td>Penalisation of an employee for making a</td>
<td>May require the employer to take a specified course of</td>
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<td>Act</td>
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<tr>
<td>European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003</td>
<td>4, 5, 6, 7, 8</td>
<td>Failure to protect the rights of employees arising from an employment contract in the event of a transfer of a business or part of a business, in which they are employed, which entails a change of employer.</td>
<td>May require the employer to comply with the Regulations, take a specified course of action and award compensation not exceeding 4 weeks’ remuneration (Regulation 8 breach) or 2 years’ remuneration (other breach).</td>
</tr>
<tr>
<td>European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006</td>
<td>7, 8, 9, 10, 11</td>
<td>Failure to comply with provisions relating to annual leave, health assessments, health and safety, working time and the adaptation of work.</td>
<td>May require the employer to comply with the Regulations, and award compensation not exceeding 2 years’ remuneration.</td>
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<tr>
<td>Act</td>
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<tr>
<td>European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006</td>
<td>4, 5 to 12, 13, 14, 15, 19</td>
<td>Contraventions relating to the negotiation, interpretation or operation of an agreement, the interpretation or operation of the Standard Rules; the penalisation of employee representatives; depriving employees of their rights to employee involvement</td>
<td>May require the taking of a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007</td>
<td>9(4)</td>
<td>Subjecting an employee to any prejudice because the employee has, for the purposes of the 2007 Regulations, made a report of an incident of which the employee may have knowledge</td>
<td>May require the taking of a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
</tr>
<tr>
<td>European Communities</td>
<td>39(1)</td>
<td>Penalisation for performing</td>
<td>May require the taking of a specified course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
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<tr>
<td>Act</td>
<td>Section or Regulation</td>
<td>Contravention</td>
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<tr>
<td>(Cross-Border Mergers) Regulations 2008</td>
<td>functions under the 2008 Regulations</td>
<td>course of action and make an award of compensation not exceeding 2 years’ remuneration</td>
<td></td>
</tr>
<tr>
<td>European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-Border Services in the Railway Sector) Regulations 2009</td>
<td>Schedule 1</td>
<td>Failure to provide for daily rest periods, breaks, weekly rest periods and contravention of driving time periods.</td>
<td>May require the employer to comply with the Regulations, and award compensation not exceeding 2 years’ remuneration.</td>
</tr>
<tr>
<td>European Communities (Road Transport) (Organisation of Working Time of Persons performing Mobile Road Transport Activities) Regulations 2012</td>
<td>5, 8, 9, 10, 11, 12</td>
<td>Failure to comply with maximum working hours and night time work restrictions, rest and break period requirements and other employer obligations.</td>
<td>May require the employer to comply with the Regulations, and award compensation not exceeding 104 weeks’ remuneration.</td>
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Appendix F2 Submissions from Garda Associations - AGSI

Appendix 4: Code of Practice on Dispute Procedures (including in Essential Services)

1. INTRODUCTION
   1. Section 42 of the Industrial Relations Act 1990 makes provision for the preparation of draft codes of practice by the Labour Relations Commission for submission to the Minister for Labour.
   2. In February 1991 the Minister for Labour, Mr. Bertie Ahern TD, requested the Commission to prepare codes of practice on dispute procedures and the levels of cover which should be provided in the event of disputes arising in essential services. When preparing this Code of Practice the Commission held meetings and consultations with the Irish Congress of Trade Unions, the Federation of Irish Employers, the Department of Finance, the Department of Labour, the Local Government Staff Negotiations Board, the Labour Court and representatives of the International Labour Organisation. The Commission has taken account of the views expressed by these organisations to the maximum extent possible in preparing this Code.
   3. The Code recognises that the primary responsibility for dealing with industrial relations issues and the resolution of disputes rests with employers, employer organisations and trade unions. It is the intention of the Code to ensure that in line with this responsibility employers and trade unions:
      a. agree appropriate and practical arrangements for resolving disputes on collective and individual issues;
      b. observe the terms of these agreements; and
      c. refrain from any actions which would be in contravention of them.

4. The Code is designed to assist employers* and trade unions in making agreements which recognise the rights and interests of the parties concerned and which contain procedures which will resolve issues in a peaceful manner and avoid the need for any of the parties to resort to actions which will lead to a disruption of supplies and services, and a loss of income to employees and of revenue to employers.
   *The use of the word "employers" in the Code includes employer organisations where relevant and appropriate.

5. The major objective of agreed procedures is to establish arrangements to deal with issues which could give rise to disputes. Such procedures provide for discussion and negotiation with a view to the parties reaching agreement at the earliest possible stage of the procedure, and without resort to any form of industrial action.

6. The Code provides practical guidance on procedures for the resolution of disputes between employers and trade unions and how to operate them effectively. The principles contained in the Code are appropriate for employments in the public and private sectors of the economy irrespective of their function, nature or size.

7. The procedures of the Code provide a framework for the peaceful resolution of disputes, including disputes in essential services. The Code also provides general guidance to employers and trade unions on the arrangements which are necessary to ensure minimum cover or service where disputes which give
rise to stoppages of work could have serious and adverse consequences for the community or the undertaking concerned and its employees.

8. Although the Code has been prepared primarily for employments where terms of employment are established through employer/trade union agreements, its general principles should be regarded as being applicable to other undertakings and enterprises and to their employees.

2. GENERAL PROVISIONS

9. Agreements between employers and trade unions on dispute settlement procedures can make a significant contribution to the maintenance of industrial peace. The dispute procedures contained in the Code should be seen as providing an underpinning for the conduct of industrial relations in the enterprise and in relationships between the parties.

10. Agreements on dispute procedures should be seen to be fair and equitable as between the interests of the parties and should include provision for the resolution of disputes on collective and individual issues, and such procedures should be introduced where they currently do not exist.

11. Employers and trade unions should examine existing procedures at the level of the enterprise and take whatever steps may be necessary to ensure that the principles outlined in the Code are incorporated within them.

12. Dispute procedures should be as comprehensive as possible covering all foreseeable circumstances and setting out the consecutive stages involved in the resolution of disputes on collective and/or individual issues. Such procedures should include agreement on the appropriate level of management and trade union representation which will be involved at each stage of the procedure. The actions required of the parties at each stage of the procedure should be clearly indicated.

13. Agreements between employers and trade unions should be in writing so as to eliminate the possibility of misunderstandings arising from lack of awareness of procedures or misinterpretation of informal arrangements which may have come to be regarded as "custom and practice".

14. Employees and management at all levels should be aware of the agreed procedures. Accordingly, arrangements should be made for these procedures to be communicated and explained through whatever means may be appropriate.

15. Dispute procedures should afford early access to disputes resolution machinery and to arrangements for the settlement of collective and individual issues within a reasonable timescale. The introduction of any specific time limits for the operation of different stages of a disputes procedure is a matter for consideration by employers and unions at local level.

16. The procedures for handling disputes on collective and individual issues should take account, where appropriate, of the functions of the relevant State agencies (the Labour Relations Commission, the Labour Court, the Rights Commissioner Service, the Equality Service and the Employment Appeals Tribunal) so as to facilitate the potential use of these services in the development and maintenance of good industrial relations.

17. Nothing in the Code precludes an employer and trade union in an enterprise industry or service from adding other stages to their dispute procedures should this be considered appropriate.
18. The operation of dispute procedures should be reviewed from time to time with the object of improving the practical working of the procedures.
19. The Labour Relations Commission will provide assistance to employers and trade unions in formulating agreed dispute procedures in accordance with the Code.

3. EMERGENCY/MINIMUM SERVICES
20. While the primary responsibility for the provision of minimum levels of services rests with managements, this Code recognises that there is a joint obligation on employers and trade unions to have in place agreed contingency plans and other arrangements to deal with any emergency which may arise during an industrial dispute. Employers and trade unions should co-operate with the introduction of such plans and contingency arrangements. In particular, employers and trade unions in each employment providing an essential service should co-operate with each other in making arrangements concerning:
   a. the maintenance of plant and equipment
   b. all matters concerning health, safety and security
   c. special operational problems which exist in continuous process industries
   d. the provision of urgent medical services and supplies
   e. the provision of emergency services required on humanitarian grounds.
21. In the event of the parties encountering problems in making such arrangements they should seek the assistance of the Labour Relations Commission.

4. DISPUTE PROCEDURES - GENERAL
22. The dispute procedures set out below should be incorporated in employer/trade union agreements for the purpose of peacefully resolving disputes arising between employers and trade unions. Such agreements should provide:
   a. that the parties will refrain from any action which might impede the effective functioning of these procedures
   b. for co-operation between trade unions and employers on appropriate arrangements and facilities for trade union representatives to take part in agreed dispute procedures
   c. for appropriate arrangements to facilitate employees to consider any proposals emanating from the operation of the procedures.
23. Trade union claims on collective and individual matters and other issues which could give rise to disputes should be the subject of discussion and negotiation at the appropriate level by the parties concerned with a view to securing a mutually acceptable resolution of them within a reasonable period of time. Every effort should be made by the parties to secure a settlement without recourse to outside agencies.
24. In the event of direct discussions between the parties not resolving the issue(s), they should be referred to the appropriate service of the Labour Relations Commission. The parties should co-operate with the appropriate service in arranging a meeting as soon as practicable to consider the dispute.
25. Agreements should provide that, where disputes are not resolved through the intervention of these services and where the Labour Relations Commission is satisfied that further efforts to resolve a dispute are unlikely to be successful, the parties should refer the issues in dispute to the Labour Court for investigation and recommendation or to such other dispute resolution body as may be prescribed in their agreements.

26. During the period in which the above procedures are being followed no strikes, lock-outs or other action designed to bring pressure to bear on either party should take place.

27. Strikes and any other form of industrial action should only take place after all dispute procedures have been fully utilised.

28. Where notice of a strike or any other form of industrial action is being served on an employer a minimum of 7 days' notice should apply except where agreements provide for a longer period of notice.

29. The procedures outlined in paragraphs 24 and 25 above refer to employees who have statutory access to the Labour Relations Commission and the Labour Court under the Industrial Relations Acts, 1946 to 1990. In the case of employees who do not have access to these bodies, for example certain employees in the public services, discussions should take place between the parties concerned with a view to developing procedures which would be in accordance with the principles included in this Code to the extent that such procedures do not already exist. In developing such procedures the parties should have regard to such considerations as the size and complexity of the employments concerned, the nature of the services provided, and the terms of employment of the employees involved.

5. ESSENTIAL SERVICES - AGREEMENTS ON SPECIAL PROCEDURES

30. In the case of essential services, additional procedures and safeguards are necessary for the peaceful resolution of disputes and these should be included in the appropriate agreements between employers and trade unions. These services include those whose cessation or interruption could endanger life, or cause major damage to the national economy, or widespread hardship to the Community and particularly: health services, energy supplies, including gas and electricity, water and sewage services, fire, ambulance and rescue services and certain elements of public transport. This list is indicative rather than comprehensive. The provisions of this section of the Code could be introduced by agreement in other enterprises or undertakings where strikes, lock-outs or other forms of industrial action could have far-reaching consequences.

31. These additional procedures and safeguards should be introduced through consultation and agreement in all services and employments coming within the scope of paragraph 30 above. The parties should recognise their joint responsibility to resolve disputes in such services and employments without resorting to strikes or other forms of industrial action.

32. The introduction of these additional procedures and safeguards should be accompanied by arrangements for the dissemination and exchange of information relating to various aspects of the life of the undertaking concerned including its relationship with the community which it serves. Employers should make appropriate arrangements for consultation with the unions.
through the use of agreed procedures especially where major changes affecting employees' interests are concerned.

33. Except where other procedures and safeguards have been introduced which ensure the continuity of essential supplies and services, agreements negotiated on a voluntary basis should include one of the following provisions in order to eliminate or reduce any risk to essential supplies and services arising from industrial disputes:

a. acceptance by the parties of awards, decisions and recommendations which result from the final stage of the dispute settlement procedures where these include investigation by an independent expert body such as the Labour Court, an agreed arbitration board or tribunal or an independent person appointed by the parties

or

b. a specific undertaking in agreements that, in the event of any one of the parties deciding that an award, decision or recommendation emerging from the final stage of the dispute settlement procedure is unsatisfactory they will agree on the means of resolving the issue without resort to strike or other forms of industrial action, such agreements to include a provision for a review of the case by an agreed recognised body after twelve months, such review to represent a final determination of the issue

or

c. provision that the parties to an agreement would accept awards, decisions or recommendations resulting from the operation of the final stage of the dispute procedure on the basis that an independent review would take place at five-yearly intervals to examine whether the employees covered by the agreement had been placed at any disadvantage as a result of entering into such agreement and if so to advise, having regard to all aspects of the situation, including economic and financial considerations, on the changes necessary to redress the position.

6. ESSENTIAL SERVICES - MAINTENANCE OF INDUSTRIAL PEACE

34. Where the parties have not concluded an agreement incorporating the procedures referred to in paragraph 33(a) or (b) or (c) and otherwise where for any reason a serious threat to the continuity of essential supplies and services exists, or is perceived to exist, as a result of the failure of the parties to resolve an industrial dispute and where the Labour Relations Commission is satisfied that all available dispute procedures have been used to try to effect a settlement, the Labour Relations Commission should consult the Irish Congress of Trade Unions and the Irish Business and Employers Confederation about the situation. The objective of such consultation should be to secure their assistance and co-operation with whatever measures may be necessary to resolve the dispute including, where appropriate, arrangements which would provide a basis for a continuation of normal working for a period not exceeding six months while further efforts by the parties themselves or the dispute settlement agencies were being made to secure a full and final settlement of the issues in dispute.
7. REVIEW OF CODE

35. The Commission will review the draft Code and its operation at regular intervals and advise the Minister for Jobs, Enterprise and Innovation of any changes which may be necessary or desirable.

APPENDIX I

S.I. No. 1 of 1992

Industrial Relations Act 1990, Code of Practice on Dispute Procedures (Declaration) Order 1992

WHEREAS the Labour Relations Commission has prepared a draft Code of Practice on dispute procedures, including procedures in essential services;

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of section 42 of the Industrial Relations Act 1990 (No. 19 of 1990), and has submitted the draft Code of Practice to the Minister for Labour;

NOW THEREFORE, I, MICHAEL O'KENNEDY, Minister for Labour, in exercise of the powers conferred on me by subsection (3) of that section, hereby order as follows:

1. This Order may be cited as the Industrial Relations Act 1990, Code of Practice on Dispute Procedures (Declaration) Order 1992.

2. It is hereby declared that the draft Code of Practice set out in the Schedule to this Order shall be a Code of Practice for the purposes of the Industrial Relations Act 1990 (No. 19 of 1990).

GIVEN under my Official Seal, this 6th day of January 1992.

MICHAEL O'KENNEDY
Minister for Labour
Code of Practice 1
August 06
In relation to the proposal to provide access to the Workplace Relations Commission for Garda Associations.

It is the view of our Association that Gardaí require robust and timely mechanisms to deal with industrial relation issues. This should involve ensuring that the partnership type forum is re-established internally, escalation to a Conciliation & Arbitration council type forum to deal with matters that are not reserved internally. The issue of pay review should be supported by an expert committee to determine Garda pay every 2-3 years as proposed during the Horgan review. Any disagreed issues should then have the appropriate access to the Workplace Relations Committee (WRC) & Labour court if required.

It is the view of our Association that Garda Association status should be maintained and they do not require union status as it could place members in the difficult situation of potentially having to perform their duties for example policing demonstrations with members of the same union or affiliated. This could create a compromising situation for An Garda Síochána and is a key reason to maintain Association status with the appropriate mechanisms as outlined above to deal with Industrial issues.

In relation to the questions outlined, the Association have updated above.

1. Question 1 – Yes
2. Questions 2/3 & 4 – there is a requirement to have access to the full services of the WRC and labour court were required. However as above there should be little requirement if the proper internal and C & A facilities are available and adhere to the timelines.
3. Question 5 – A dedicated expert group could deal with any matters that are not appropriate for the WRC.
4. Question 6 – We presume the requirement to have parties bound by decisions would be discussed and required as appropriate.

5. Question 7 – the C & A scheme should be maintained but there is a requirement to re-establish C & A and maintain timelines for decisions agreed or not. The current C & A has fallen into a position that meetings did not take place or maintain any timelines which led to the frustration of all parties to get simple issues resolved leading to the current position.

6. Question 8 – strict application of rules and timelines on all parties.

7. Question 9 – n/a

8. Question 10 – this Association supported the setup of the Protocols chaired by an Assistant Commissioner.

The Association are available to participate in the working group when the opportunity is deemed appropriate to add value to a proposal.

Yours sincerely

__________________
Denis Ferry
General Secretary
Association of Garda Superintendents
F4. Submission from the Association of Garda Chief Superintendents (AGCS)

The Association of Garda Chief Superintendents has examined the Consultation Paper in relation to the Working Group on Industrial Relations Structures for An Garda Síochána.

- The Association is of the view and during consultations with Mr. John Horgan during his review of Garda Pay informed him that due to the numbers in the Association remaining as a Staff Association is the preferred option of this Association.

- Given this, the Association is of the view that it is important to have robust internal mechanisms to deal with dispute resolutions within An Garda Síochána.

- This process should also contain mechanisms to advance such disputes if not resolved to the Conciliation and Arbitration Council with an independent Chairman.

- Access to the Workplace Relations Commission as a last resort should also be included in this dispute resolution mechanism with precise timeframes set out for adherence of all parties involved.

The Association is always available to discuss this matter further.