1. Background

In December 2018, the Government published the plan entitled *A Policing Service for our Future* to implement the Report of the Commission on the Future of Policing in Ireland (CoFPI) – *The Future of Policing in Ireland*. In that context the Government approved the preparation as a matter of priority of the General Scheme of the Policing and Community Safety Bill as recommended by CoFPI (Decision S180/20/10/1002C). The Programme for Government – *Our Shared Future* – commits to rapidly implementing the CoFPI Report and to introducing a new Policing and Community Safety Bill to redefine the functions of An Garda Síochána.

The December 2018 Government Decision also approved, in principle, the establishment of an Independent Examiner of terrorist and serious crime legislation, subject to an examination of the functions of such a role and the detail of the statutory powers that would be required for the role. That work has been completed and provision is made for the establishment of the Independent Examiner of Security Legislation in this Bill as it will complement the stronger independent external oversight regime proposed for policing. Accordingly, “security” is included in the title of the Bill to better indicate its content.

In addition to CoFPI, other reports have been considered in the development of the Scheme including the Report of the Effectiveness and Renewal Group in relation to the Department of Justice (the ERG), the reports of the Disclosures Tribunal, and reports of the Policing Authority and the Garda Síochána Inspectorate. The opportunity has also been taken to review provisions of the Garda Síochána Act 2005 not substantially affected by CoFPI and to address any issues in their operation and to modernise them where they are being restated.

In line with the Government Decision of December 2018 the Minister’s Department has consulted extensively with stakeholders most directly affected including the Garda Commissioner and the three policing oversight
bodies in the course of the development of the Scheme. There will be further consultation and engagement with other Departments and key stakeholders during the drafting of the Bill.

2. Objectives of General Scheme

The Scheme provides for a new framework for policing, security and community safety aimed at improving the performance and accountability of the policing and security services to the benefit of the safety of communities. The Scheme provides that the Bill when enacted will repeal the Garda Síochána Act 2005 (as amended) in its entirety.

The main objectives of the Scheme are:

- to recognise the prevention of harm to individuals, particularly those who are vulnerable or at risk, as an explicit objective of An Garda Síochána;
- to provide a new coherent governance and oversight framework for policing that will strengthen both the management of An Garda Síochána and independent external oversight supporting clear and effective accountability and ultimately better policing;
- to make community safety a whole of government responsibility by -
  - providing a new framework at national and local level to enhance community safety including through the establishment of Local Community Safety Partnerships, and
  - placing an obligation on Departments of State and public service bodies to cooperate with An Garda Síochána and each other in relation to enhancing community safety; and
- the establishment of an Independent Examiner of Security Legislation to strengthen oversight of national security.

The governance of An Garda Síochána will be strengthened through empowering the Garda Commissioner, as the “true CEO”, to lead the organisation and drive reform. The Commissioner will be supported, and held to account for his or her performance, by a non-executive board, a corporate governance standard in the public and private sector. The additional
functions of the Commissioner will, similar to the CEOs of other public sector bodies, include workforce planning, human resources and industrial relations, and finance. The Commissioner’s operational independence is made explicit. The Board of An Garda Síochána will be accountable to the Minister for its performance. The Commissioner will continue to be required to keep the Minister and the Secretary General of the Department informed of significant matters and to account to the Minister and Government for policing and security matters as needs be.

Independent external oversight will be strengthened through the new Policing and Community Safety Authority and the reorganised Garda Síochána Ombudsman Commission.

The Policing and Community Safety Authority (the “new Authority”) will merge the broad-ranging oversight functions of the existing Policing Authority and the inspection functions of the Garda Síochána Inspectorate superseding both bodies. It will oversee and assess in an independent and transparent manner the performance of An Garda Síochána in relation to policing services but with the benefit of an in-house empowered inspection function. It will (as is the case with the Policing Authority) be required to hold meetings in public with the Garda Commissioner and the senior leadership team.

The three person Garda Síochána Ombudsman Commission will be replaced with an Ombudsman /Deputy Ombudsman model so that it will have a clear and publicly identifiable head. It will also become a vote holding body to reinforce its independence. It will have an expanded remit in terms of garda personnel and the allegations of wrongdoing by garda personnel which come within its jurisdiction to investigate. The system for the handling and investigation of allegations of wrongdoing will also be substantially reformed to support a streamlined, simplified approach with appropriate safeguards that will be to the benefit of complainants, An Garda Síochána and the wider public.

The totality of the changes contained in the Scheme - the new governance and oversight framework for An Garda Síochána, the complimentary strengthening of oversight of the wider national security
area through the establishment of the Independent Examiner of Security Legislation, and the national and local structures proposed to drive interagency cooperation and community engagement to ensure that people are safe and feel safe in their communities - will see the policing and security landscape transformed in the coming years.

The framework contained in the Scheme is consistent with the constitutional requirement that the Government retains ultimate control in relation to matters of fundamental importance to the exercise of executive powers in these matters while allowing for the delegation of appropriate policing matters.

3. Main Provisions of the General Scheme

The Scheme consists of 9 Parts with 252 heads and 7 schedules. The substantive proposals are contained in Parts 2 to 7, the most significant of which are detailed below. Parts 1, 8 and 9 respectively concern preliminary and general matters, regulation making powers and miscellaneous matters, and consequential amendments to the statute book arising from the Scheme.

Part 2 An Garda Síochána (Ch. 1-11 heads 6 to 83)

The Scheme continues the Garda Síochána in being but provides that it shall be known as An Garda Síochána. This change to how the organisation is to be titled in the English language version of legislation is intended to reflect An Garda Síochána being the title used by the organisation itself and the accepted title in common usage. This Part addresses the functions of An Garda Síochána, the purpose and principles underpinning those functions, the arrangements for its governance, organisation and personnel, and the relationship with the Minister and Government.

Functions of An Garda Síochána (Ch. 1 head 8)

As recommended by CoFPI, the prevention of harm particularly to individuals who are vulnerable or at risk is included as a specific objective of An Garda Síochána. This recognises that much of the work of Gardaí on a daily basis, as is the case with other police services, is concerned with the non-crime
related activity of providing services to people with mental health and addiction conditions, people who are homeless, children, the elderly and others at risk. The existing obligation on An Garda Síochána to cooperate with other Departments of State, agencies and other bodies is maintained with a reciprocal obligation provided for in Part 3 to support a whole of government approach to community safety. The obligation to cooperate does not confer any new rights in law on any person.

For the purposes of the Scheme, and as set out in the proposed long title, the concept of community safety can be understood to involve multi-sectoral approaches at national and local level to enhance the safety, and perception of safety, in communities through collaboration between relevant Departments of State and public service bodies and community engagement in the prevention of crime and harm.

Having regard to the emphasis on human rights as the foundation and purpose of policing, the objective of An Garda Síochána in this regard has been strengthened to include an explicit reference to protecting human rights. The language throughout the Scheme in relation to human rights has also been reinforced and the responsibilities of the Garda Commissioner and the Board in this regard made explicit.

**Board of An Garda Síochána (Ch. 2 heads 10–18)**

As recommended by CoFPI, the Scheme provides for the establishment of a non-executive Board of An Garda Síochána, a corporate governance standard across the public and private sector. The Commissioner will not be a member. As “true CEO” he or she will report to the Board and be held accountable by it for his or her performance. The benefit of the Board will be to provide assurance to the Minister – and support to the Commissioner - in relation to the internal governance of the organisation and ensuring that risks are identified at an early stage and mitigated. It will bring external expertise in corporate areas of identified need and provide an independent external perspective, supporting the Commissioner’s capacity to plan, manage and drive reform and providing robust but constructive challenge to strengthen internal decision-making capacity.
The Board will comprise 9 members including a chairperson, appointed by the Minister. It is intended that the selection will be done in accordance with the generally applicable open process for the appointment of persons to State boards. A person will be required to have sufficient experience and expertise in matters connected with the functions of An Garda Síochána, matters of organisational governance, management, public administration or financial matters to enable him or her to make a substantial contribution to the performance of An Garda Síochána. In addition to standard ineligibility provisions in relation to persons holding political office, members of garda personnel and members of the policing oversight bodies will be ineligible. Provision is made for standard good governance arrangements including gender balance, staggered terms of appointment and limits on reappointments and for procedural matters. The Board will meet at least 6 times annually. It will be required to establish an audit committee and may establish other committees. It will be supported by a secretariat appointed by the Board, in consultation with the Commissioner, from appropriately qualified garda staff.

The functions of the Board will be to oversee the development of major corporate strategies, annual costed service plans, governance standards and controls, to approve senior appointments/dismissals (other than of the Garda Commissioner and Deputy Commissioners), to establish and implement arrangements for the management of the Commissioner’s performance, and to undertake other specific functions as set out in the Scheme. As with other such boards, the Board will have no role in relation to operational matters.

The Commissioner will be required to provide the Board with all necessary information to enable it to perform it functions effectively. Having regard to the confidentiality and secrecy attaching to certain information held by the organisation (e.g. sensitive details relating to national security infrastructure projects) the Commissioner may exclude information the disclosure of which could be prejudicial to the security of the State. This will be circumscribed by rules and procedures to be agreed by the Board and the Commissioner by way of written protocols. Having regard to the nature of the functions of the Board and its non-involvement in operational matters it is not anticipated that this will arise with any frequency.
The Board will be accountable to the Minister for its performance and will be required to inform the Minister of any matters that it considers require the Minister’s attention.

Garda Commissioner, Deputy Garda Commissioner (Ch. 3 heads 19-24)
The appointment of the Garda Commissioner will continue to be made by the Government as required for consistency with the executive power of the Government. Deputy Commissioners will be similarly appointed as they may on occasion be required to act as Garda Commissioner. The selection process will be undertaken by the Public Appointments Service at the request of the Minister and following consultation with the Board and the Policing and Community Safety Authority (the successor body to the Policing Authority and Inspectorate provided for under Part 4) in relation to the recruitment process and job specifications. This approach ensures that the selection process, in line with reforms of recent years, will be conducted in accordance with best practice recruitment practice and rigorous standards of fairness and impartiality, and is, and is perceived to be, non-political. The term of appointment for the Garda Commissioner will be a period not exceeding 5 years but with the option of reappointment by the Government for a further period not exceeding 2 years following consultation with the Board and the new Authority in accordance with regulations. Provision is made for the suspension of the Commissioner or a Deputy by the Minister where there is an investigation into allegations of criminal wrong doing or serious misconduct. The removal of either office holder is a matter for Government. The suspension or removal may be at the initiative of the Minister/Government or on the recommendation of the Board. Such decisions are subject to compliance with fair procedures and natural justice and consultation with the Board and the new Authority (in so far as the matter concerns policing services).

Functions, duties of Garda Commissioner (Ch 4 heads 25 to 34)
The Garda Commissioner will continue to direct and control the organisation and be responsible for carrying on and managing and controlling generally the administration and business of An Garda Síochána. The functions as set out make it clear that the Commissioner is responsible for the allocation and deployment of the resources available to him or her. They have been updated to reflect the emphasis in CoFPI on the Commissioner’s responsibility to seek to ensure the continuous improvement of policing and security services, to
implement arrangements for the continuous professional development of garda personnel and to fulfil the obligations on the organisation arising under section 42 of the Irish Human Rights and Equality Act 2014. In line with the objective of empowering the Commissioner to manage the organisation, the prohibition on the Commissioner entering into contracts in relation to land is removed; instead he or she will be able to do so with the appropriate ministerial consents.

As noted above the Commissioner will be accountable to the Board for the performance of his or her functions. The Commissioner will continue to be required to account fully to the Minister and Government for policing and security through the Secretary General of the Department and to keep the Minister and the Secretary General informed of significant developments and any other matters that in his or her opinion should be brought to the Minister's or Secretary General's attention.

As recommended by CoFPI the operational independence of the Garda Commissioner vis a vis the Board, the Minister and any Minister of the Government is made explicit in the Scheme.

In relation to the strengthened oversight bodies the Commissioner will be required to assist and cooperate with them. Although rarely used, the Scheme continues to provide that the Minister with the approval of the Government may issue written directives concerning any matter to An Garda Síochána. The new Authority will (as does the Policing Authority at present) have the power to recommend to the Minister that a directive be issued in relation to a policing matter.

**Garda personnel (Ch 5 heads 35-48)**

Significant change is proposed in relation to the personnel of An Garda Síochána to reflect CoFPI's recommendations that the Garda Commissioner must be empowered with the normal levers of control available to a CEO to lead the organisation and to drive reform, that An Garda Síochána be treated as an organisation with a single workforce with a common loyalty and mission, and that efforts are made to broaden the diversity of the workforce.
The Scheme introduces the concept of “garda personnel” which comprises garda members (including reserve members) and garda staff (formerly referred to as civilian staff). The position adopted throughout is that the provisions of the Scheme should apply to all personnel unless there is a compelling reason to draw a distinction. Connected with this approach, the Scheme enables garda staff to be recruited directly to An Garda Síochána rather than to the Civil Service with provision made for the transfer of existing staff subject to the making of an order by the Minister following engagement with staff representative bodies.

The Scheme dispenses with the long standing approach of determining the maximum number of members in each rank by Government Order and with the Policing Authority’s approving role in relation to the number and grades of garda staff. Instead it provides that the Commissioner will determine the number and composition of the workforce on foot of periodic strategic workforce planning exercises and subject to the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform. The Commissioner will also have responsibility for determining terms and conditions of garda personnel, again with the relevant ministerial consents in line with public sector norms.

In relation to the recruitment and appointment of garda personnel the approach in the Scheme is designed to ensure that the processes are independent, impartial, reflect best practice and are conducted efficiently. The approach will also support greater diversity through enabling more opportunities for open recruitment to all ranks and bring greater alignment between garda members and garda staff. In summary:

- Assistant Commissioner and chief superintendent appointments will require the approval of the Board following competitions by the Public Appointments Service - regulations will provide for the new Authority to nominate a representative to sit on selection boards,
- superintendents, inspectors and sergeants will be appointed by the Commissioner in accordance with regulations and public sector recruitment standards and processes,
• appointments to senior garda staff positions will also require the approval of the Board with the selection of all garda staff done in accordance with public sector recruitment standards and processes.

The removal of senior personnel will also require the approval of the Board.

The Board will also have a specific function to ensure that appropriate arrangements for the recruitment and appointment of members of garda personnel that comply with best practice are in place.

These changes, whereby responsibility for the selection and/or appointment of senior garda personnel is situated with the garda organisation itself rather than the new Authority, are instrumental to ensuring that the new body is focused exclusively on providing robust, truly independent, oversight of An Garda Síochána's policing performance. The new Authority will, as part of its broad-ranging oversight role, keep under review the arrangements for recruitment and appointments.

In addition to supporting diversity through open recruitment, the Scheme removes the reference to “before God” from the solemn declaration made by members at the time of admission. Having regard to the objective of promoting a single workforce ethos provision is also made for garda staff to give an undertaking on appointment.

**Accountability and funding of An Garda Síochána (Ch 6 heads 49-65)**

The Scheme provides for the determination of policing and security priorities, a 3 year strategic plan, annual service plans and annual and multi-annual capital plans which will set the parameters for the services to be provided by An Garda Síochána and support accountability in relation to its funding. The approach is designed to support a more structured, transparent relationship between An Garda Síochána and the Minister and Department with a costed annual service plan at its core as recommended by CoFPI and the ERG.

The Minister will continue to determine the security priorities while the new Authority will inherit the Policing Authority's responsibility for determining policing priorities subject to the approval of the Minister. The continuing role
of the new Authority will ensure that the policing priorities are informed by the views and values of communities.

The Board will adopt a 3 year strategic plan for submission to the Minister for approval. The new Authority will have a consultative role consistent with its remit of independent oversight of policing.

The Board will adopt an annual costed service plan for submission to the Minister for approval following the announcement of the Estimates. The Authority will have a consultative role consistent with its remit.

The Commissioner will continue to be the Accounting Officer for the Garda Vote and to be accountable to the Public Accounts Committee and other Oireachtas Committees.

The Minister's role is consistent with the constitutional requirement that the Government retains ultimate control in relation to matters of fundamental importance to the exercise of its executive powers in this area while allowing for delegation of appropriate policing matters.

**Codes of ethics, standards of integrity, unauthorised disclosure of information (Ch 7 heads 66-68)**

The Scheme situates responsibility for the preparation of a code of ethics for members of garda personnel with the new Authority. It is considered appropriate that this responsibility which currently sits with the Policing Authority should pass to its successor. The Code established by the Policing Authority in 2016 will remain unless the new Authority decides that revision is appropriate. Provision is also made for the standards of integrity to be adhered to by Board and committee members, advisors or consultants and their employees and for the Board to prepare codes of ethics for such persons.

**Chapters 8 to 11 (heads 69 to 83)**
These Chapters restate provisions in the 2005 Act subject to certain modifications to improve their operation and align with the overall Scheme. A number of points are of note.

Chapter 8 (head 69) restates section 42 of the 2005 Act which provides for the establishment of a special inquiry relating to any aspect of the administration, practice or procedure of An Garda Síochána. The threshold for the establishment of such an inquiry is clarified and its remit is extended to encompass all garda personnel. The provision is subject to further review having regard to the experience of stakeholders of its use to date and the extent to which the process achieves its original objective of providing a relatively speedy and informal form of inquiry.

Chapter 9 (heads 70-71) restates provisions of the 2005 Act in relation to liability on the part of garda members and the provision of legal aid but transfers responsibility for making a contribution to the legal costs of members from the Minister to the Commissioner.

Chapter 10 (heads 72-80) restates provisions of the 2005 Act in relation to international service with some amendment to better reflect the nature and scope of garda overseas service. It continues to provide for reciprocal arrangements for the secondment and exchange of members of the Police Service of Northern Ireland and of An Garda Síochána. Further consideration is being given to how these provisions may be extended to facilitate the development of reciprocal arrangements with other police services, where appropriate, having regard to the CoFPI recommendation on the greater use of secondments and exchanges to support talent management and development.

Chapter 11(81-83) restates a number of offences in the 2005 Act of causing disaffection and impersonation of a member. A new offence of driving a vehicle with blue flashing lights in a manner likely to deceive is provided for. While rare such incidents occur from time to time.

**Discipline System**

As referred to in the Government Decision of December 2018 the Garda Commissioner has completed a detailed review of the discipline system having regard to the recommendations of the Second Interim Report of the Disclosures Tribunal and CoFPI. While that review is under consideration by
the Minister’s Department with a view to the development of regulations, its overarching recommendation that the current system should be replaced by a system that differentiates between misconduct and performance management issues has been reflected in the development of this Part and other Parts of the Scheme.

Part 3 Community Safety (Heads 84 -95)

A key principle of CoFPI is that policing is not the responsibility of An Garda Síochána and the Department of Justice alone, rather it is a shared responsibility involving other Departments and agencies and the wider community working together. Having regard to the Working Group on Community Safety established as a subgroup of the Implementation Group on Policing Reform, and further policy development work undertaken by the Minister’s Department, the Scheme provides for a framework at national and local level to underpin a whole of government approach to promoting safer communities through preventing crime and harm. It is built around:

- **a national strategy on community safety** to serve as an overarching policy framework and programme of actions to guide the other parts of the framework. The strategy will be prepared by the Minister in conjunction with a number of other relevant Ministers to support a “whole of government” approach,
- **a designated Cabinet Committee** to provide high level political oversight,
- a national community safety steering group to provide senior leadership and direction for the implementation of the national strategy and fostering interagency cooperation,
- **a national office for community safety**, sitting under the steering group, headed by a director which will be the operational executive with responsibility for delivering the national strategy objectives and supporting the Local Community Safety Partnerships,
- **Local Community Safety Partnerships** which will replace the Joint Policing Committees to develop and implement local community safety plans that respond to the specific needs of the community. Membership will include local representatives, service providers, and a range of community representatives who will work in partnership and be
supported by dedicated staff. They will also provide a forum for consultation in relation to local policing priorities,

- **statutory obligations on Departments of State and other public service bodies** to cooperate in the delivery of community safety and to have regard to community safety in the conduct of their own functions. As referenced above these obligations will create no new rights on the part of individuals. The wording of these obligations will be reviewed further in the course of drafting to ensure they achieve the desired objective.

Having regard to community safety being a relatively novel concept in the State it is considered desirable that the structures are capable of being adapted quickly in light of experience and emerging needs. To achieve this the Scheme sets out the policies and principles to enable the making of regulations governing the detailed functions and operation of the above mentioned entities. Learnings from the piloting of the concept of Local Community Safety Partnerships in a number of areas will inform the drafting of the Scheme and the development of the regulations in due course. Having regard to the increased emphasis on the role of the new Authority in overseeing An Garda Síochána's performance in relation to community safety the Scheme provides a number of formal linkages between the above mentioned entities and the new Authority.

**Part 4 Establishment and functions of Policing and Community Safety Authority (heads 96-138)**

The Scheme provides for the establishment of the Policing and Community Safety Authority - the new Authority – as a strong, truly independent policing oversight body that will combine the broad-ranging oversight function of the Policing Authority and the complementary inspection function of the Garda Síochána Inspectorate, superseding both bodies.

As envisaged in the Scheme it will oversee and assess in an independent and transparent manner the performance of An Garda Síochána in relation to policing but with the benefit of an in-house inspection function which is not available to the Policing Authority at present. The oversight role will include overseeing and accessing how An Garda Síochána is working with other public service bodies to enhance community safety.
The in-house inspection function will be strengthened with new powers to conduct unannounced visits of Garda stations and other premises under the control of the Commissioner and consistent with the remit of the new Authority in relation to policing services. These powers will be subject to agreement of a memorandum of understanding to ensure that they are conducted in a manner that does not jeopardise criminal investigations or prosecutions or affect the management of persons in custody. In addition, having regard to the dual nature of the services provided by An Garda Síochána, provision is made for the new Authority to refer a matter to the Independent Examiner for review where the Garda Commissioner declines to comply with a request for information on the grounds of the security of the State or endangerment to the life or safety of a person who has provided information in confidence.

Provision is also made for the conduct of joint inspections with other inspection bodies where that would be mutually beneficial, and subject to such other bodies being prescribed following consultation with the responsible Minister.

The new Authority may conduct inspections at its own initiative or at the request of the Minister. The Commissioner will be obliged to provide a written response setting out his or her consideration of an inspection report and what actions he or she proposes to take in relation to the report within a specified time period.

To support the new Authority in the performance of its functions the Commissioner will (as is the case in relation to the Policing Authority) be required to assist and cooperate with the body including through the provision of information, documents and attendance at meetings including not less than 4 meetings in public annually.

The new Authority will be similar to the Policing Authority in structure. It will be a body corporate with its own vote and explicit statutory independence in the performance of its functions. It will comprise 9 members including a chair representing particular areas of experience and expertise and appointed by Government following a selection process undertaken by the Public Appointments Service and resolutions of both Houses of the Oireachtas. It will, as recommended by CoFPI, replace the existing Policing Authority and
Garda Síochána Inspectorate. This fresh start will ensure that the members of the new Authority are appointed with the appropriate expertise to carry out the specific range of functions. Provision is made for the transfer of staff, property, etc. from the existing bodies to support a smooth transition ensuring that the expertise built up by the bodies is retained. The precise resource requirements of the new Authority will be subject to further detailed examination of its functions in the context of the planning for the implementation of the legislation.

**Part 5 Office of the Garda Síochána Ombudsman (heads 139-156)**

The Scheme provides for the substantial reorganisation of the three person Garda Síochána Ombudsman Commission (GSOC). This follows a review, as recommended by CoFPI, to ensure its suitability to take on the expanded remit envisaged for it under Part 6. The body will continue in being but under an Ombudsman/Deputy Ombudsman model to ensure that the body has a clearly identifiable head for the first time. The office of Deputy is required having regard to the expanded remit but also having regard to the nature of the powers exercised by the Ombudsman (which include the power to issue a search warrant of a garda station) and the importance of having an appropriate person to exercise such powers in the Ombudsman’s absence. The office holders will be appointed by the President on the nomination of Government and following a selection process undertaken by the Public Appointments Service. Their term of office will be 6 years with the possibility of reappointment. In order to reinforce the independence of the body provision is made for it to have its own vote. The accounting officer role will be assigned to a new chief administrative officer with the appropriate skillset for such a role.

**Part 6 Complaints, incidents of concern, investigations and other matters (heads 157-190)**

The Scheme significantly expands the remit of the Office of the Garda Síochána Ombudsman, and overhauls the processes for the handling of complaints and the conduct of investigations to support timely and effective resolution while safeguarding due process for all concerned.
The expansion of its remit applies to both garda personnel and matters that may be subject to its independent oversight:

- all complaints will require to be investigated by the Garda Ombudsman other than minor service level complaints (e.g. discourtesy, failure to return a call) which will be referred, where appropriate, to An Garda Síochána for resolution in accordance with published arrangements established by the Garda Commissioner following consultation with the Ombudsman;
- allegations of criminal behaviour or serious misconduct that are not the subject of complaint from the public and which are normally investigated by An Garda Síochána itself will be subject to its oversight - the Garda Commissioner will be required to notify the Ombudsman of such “incidents of concern” in accordance with protocols to be agreed and it will be for the Ombudsman to decide what action to take including whether he or she should launch an investigation where the allegations are of a criminal nature;
- the definition of “serious harm” in relation to the obligation to refer complaints or incidents concerning the death of, or serious harm to a person as a result of garda operations or while in the custody or care of An Garda Síochána is clarified to include allegations of sexual offences and is also expanded to include allegations of abuse of power for sexual gain;
- the Garda Commissioner is empowered to refer a matter to the Ombudsman where he or she believes it to be in the public interest such as allegations of past wrongdoing;
- garda staff will be brought within its remit - this is subject to their change in status from civil servants to public servants to avoid overlap with the existing disciplinary processes that apply to the Civil Service;
- former Garda Commissioners will also come within its remit.

Under the Scheme the Ombudsman will have the power to conduct preliminary inquiries to support decisions around whether a complaint is admissible and whether the complaint or other matter warrants “formal investigation.”
The Scheme streamlines and simplifies the investigation process by providing a new single formal investigation process by which the investigating officer will have equivalent powers to that of a garda member. This will replace the current dual process which requires GSOC, on the basis of limited information and analysis, to decide at the outset whether to launch a criminal or non-criminal investigation and also requires the investigation of non-criminal matters to await the conclusion of the criminal investigation. The lawful exercise of any individual garda power will, of course, be dependent on the threshold for same being met. The overriding principles of fair procedures and natural justice will apply to any person who is the subject of such an investigation.

At the end of the investigation a report will be submitted to the Ombudsman who will decide what action is appropriate including referral of the matter to the Director of Public Prosecutions and/or to the Garda Commissioner. The Ombudsman may include recommendations in a report to the Commissioner that action should be taken under the new conduct or performance arrangements in relation to a member of garda personnel or that changes to practices, policies or procedures are required. Overall the new approach will support better decision making and more expedition in the conduct of investigations and greater transparency in the interests of the Ombudsman, An Garda Síochána, complainants and the wider public.

The obligation on the Garda Commissioner to provide information at the request of the Garda Ombudsman is strengthened to support the Ombudsman in the performance of his or her functions subject to special provisions in relation information relating to the security of the state. Where such provisions are invoked the Independent Examiner will have an oversight role.

In addition, provision is made for the sharing of information (in accordance with the applicable law) between the Garda Ombudsman, the new Authority and An Garda Síochána to support the effective performance of their functions. For example, the Ombudsman will be enabled to conduct research and analysis on trends in the types of cases it is dealing with and share its findings with other stakeholders.
The Scheme also seeks to strengthen oversight and accountability on the part of the Garda Ombudsman by providing for a right of review on the part of complainants in relation to certain decisions and also making it clear that the Ombudsman may review its own decisions and take any appropriate corrective action. In addition, the potential scope of a judicial enquiry into the conduct of a designated officer of GSOC is expanded to include all officers of the Garda Ombudsman, the policies and procedures of the Office and also members of garda personnel, where appropriate.

**Part 7 Independent Examiner of Security Legislation**

The Scheme provides for the establishment of the Independent Examiner of Security Legislation. This office represents a significant development in enhancing independent oversight of the use of legal powers in the area of security and allows for oversight of State offices and agencies who utilise the relevant security legislation and/or have a national security remit.

The primary function of the Independent Examiner will be to keep under review the operation and effectiveness of security legislation to ensure security legislation remains necessary and fit for purpose, and contains appropriate safeguards for protecting human rights. The Independent Examiner will also have a general examination function in relation to the delivery of security services; and those State offices and agencies who have a security remit will be obliged to cooperate with the Examiner in the performance of his or her duties.

The Scheme also provides that the Independent Examiner will review refusals of information to oversight bodies on grounds of the security of the State and where the oversight bodies wish to appeal that decision.

The Independent Examiner will also assume the existing oversight roles carried out by designated judges (currently serving High Court judges) relating to the operation of the statutory frameworks for data retention, interception of communications and surveillance.
The Independent Examiner will report annually to the Taoiseach, and the report shall be laid before the Oireachtas. The Independent Examiner will also produce other subject matter reports as necessary for publication. It is intended that the Independent Examiner, in carrying out his or her functions, will help promote public confidence in national security measures and enhance the national security response.

Recognising that State security is an area involving highly sensitive information which must be protected and handled with care, the provisions have been crafted to ensure that sensitive information is managed accordingly.

4. Regulatory Impact Analysis

A Regulatory Impact Analysis (RIA) will be finalised and published with the Bill.

Department of Justice
27 April 2021