

**GENERAL SCHEME OF
GARDA SÍOCHÁNA (POWERS) BILL**

General Scheme of Garda Síochána (Powers) Bill

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Part 1 – Preliminary and General

Head 1 – Short title and commencement

Provide that:

(1) This Act may be cited as the Garda Síochána (Powers) Act 2021.

(2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory note

This is a standard Head to provide for the short title and commencement.

Head 2 – Interpretation

Provide that:

(1) In this Act—

“Act of 1984” means the Criminal Justice Act 1984;

“Act of 2001” means the Children Act 2001;

“child” means a person under the age of 18;

“Commissioner” means the Commissioner of the Garda Síochána;

“electronic recording” means a record on a recording medium of—

(a) an oral communication, statement or utterance, or

(b) a series of visual images which, when reproduced appear as a moving picture, or both;

“Minister” means the Minister for Justice;

“public place” includes—

(a) any highway,

(b) any outdoor area to which at the material time members of the public have or are permitted to have access, whether as of right or as a trespasser or otherwise, and which is used for public recreational purposes,

(c) any cemetery or churchyard,

(d) any premises or other place to which at the material time members of the public have or are permitted to have access, whether as of right or by express or implied permission, or whether on payment or otherwise, and

(e) any train, vessel or vehicle used for the carriage of persons for reward.

“recording medium” means any electronic or secure network-based medium that records an audio or visual representation or holds audio or visual data for the purpose of being accessed or reproduced, with or without the aid of some other instrument.

“serious offence” means an offence for which a person of full capacity and not previously convicted may, under or by virtue of any enactment or the common law, be punished by imprisonment for a term of five years or by a more severe penalty and includes an attempt to commit any such offence, or an offence specified in *Schedule 5*.

“vehicle” includes—

(a) a road or rail vehicle, whether mechanically propelled or not,

(b) a vessel, whether sea-going or not,

(c) an aircraft, whether capable of operation or not, and

(d) a hovercraft.

(2) For the purposes of this Bill, a person reasonably suspects something at a relevant time if he or she, acting in good faith, has grounds at the time for the suspicion and those grounds, when judged objectively, are reasonable.

Explanatory note

This Head will provide for definitions which will be used throughout the Bill. The definitions section will be further developed during drafting.

A definition of “reasonable suspicion” has been included for the purpose of clarity. It is intended to reflect the current case law.

The definition of “public place” is modelled on the definition contained in the Criminal Justice (Public Order) Act 1994.

The definition of “electronic recording” is based on the definition used in Regulation 3 of the Criminal Justice Act 1984 (Electronic Recording of Interviews) (Amendment) Regulations 2010 (S.I. No. 560 of 2010).

The definition of “serious offence” is based on the definition of “arrestable offence” in the Criminal Law Act 1997, but with the additional reference to offences in Schedule 5 (the offences for which a person can be detained for over 48 hours). The inclusion of these offences within the definition of ‘serious offence’ will ensure that the power to detain under Head 48, will apply to them. Most of these additional offences have penalties of 5 years or more, but they are mentioned here for completeness.

Head 3 – Savings and transitional provisions

Provide that:

Provide that any powers of search, arrest and detention provided for in the Bill, which were exercised prior to the entry into force of the Bill, and any subsequent proceedings, are unaffected by the entry into force of the provisions of the Bill.

Provide that the abolition of a common law power under this Bill shall not affect the validity of any power exercised before its abolition or the admissibility of evidence gathered through or following the use of such power.

Provide that the powers provided for in this Bill may be exercised in respect of offences suspected or committed on or after the date of commencement, and in relation to offences suspected or committed prior to that date.

Provide for any other necessary transitional provisions (this may be provided for here or may need to be provided separately in the substantive Parts below).

Explanatory note

The purpose of this Head is to ensure that powers exercised prior to the commencement of the Bill, and subsequently amended or repealed by this Bill, are not affected and that any evidence gathered on foot of such powers can be used in subsequent proceedings.

It also includes a saving provision for common law powers exercised before the power was abolished. The Scheme abolishes the common law powers to arrest a person for breach of the peace, and to search an arrested person.

The provision will clarify that the powers under the Bill apply to offences committed both after and before the commencement of the Bill. In the case of offences committed before commencement, specific transitional provisions may be required to provide that ongoing investigations would continue under the existing law.

Head 4 – Repeals

Provide that:

- (1) The Acts specified in *Schedule 1* are repealed to the extent specified in the third column of that Schedule.

Explanatory note

This Head provides for repeals, to be listed in Schedule 1. The Bill will repeal and replace many of the existing provisions relating to police powers. The enactments currently listed in the Schedule are indicative only.

Head 5 – Regulations

Provide that:

(1) Provide a regulation making power for anything in the Act to be prescribed. Specific provisions are included for the statutory codes of practice.

(2) Provide for the laying of any Regulations and Codes of Practice made under this Act before the Houses of the Oireachtas.

Explanatory note

This Head sets out a regulation making for any matters that require to be prescribed by Regulations. It also provides for any Regulations and Codes of Practice made to be laid before the Houses of the Oireachtas.

Part 2 – Protection of Fundamental Rights

Head 6 – Obligation to respect fundamental rights

Provide that:

(1) In exercising their powers under this Bill, members of the Garda Síochána shall act with due respect for—

- (a) the fundamental rights of the person or persons in respect of whom the said power is being or is to be exercised, and
- (b) the fundamental principles of fairness and non-discrimination,

while complying with the obligation to act with diligence and determination in the investigation of crime and the protection and vindication of the rights of victims and the protection of the public.

(2) It shall not be lawful to exercise any power provided for under this Bill in a manner that amounts to inhuman or degrading treatment.

Explanatory note

The purpose of this Head is to recognise the fundamental rights principles which underpin the exercise of investigative powers provided for in the Bill by members of the Garda Síochána and to provide that members of an Garda Síochána should act with due regard to those principles when exercising any powers.

The Head is based on existing constitutional and international human rights and is not intended to alter existing law, merely to place it on a statutory footing.

The wording for subhead (1) is loosely modelled on a provision in section 55 of the Children Act 2001 which provides for principles applying to the treatment of child suspects.

Head 7 – Protection of the Rights of Children

Provide that:

- (1) Without prejudice to section 58 of the Children Act 2001, where a member of the Garda Síochána is exercising any of the powers provided for under this Bill, and he or she knows or suspects that the person in respect of whom the power is being, or is to be, exercised is a child, the member shall, before, or as soon as practicable after, exercising the power—
 - (i) notify an appropriate person that the power is to be, or has been, exercised in respect of the child,
 - (ii) record the fact that the power has been exercised in respect of a child and the circumstances of the matter, and
 - (iii) take any measures necessary and appropriate to protect the rights of the child that the child, owing to his or her age and level of maturity, may not be capable of taking himself or herself.
- (2) A child shall not be deemed to have consented to the use of any power provided for under this Bill, without the consent of a parent or guardian of the child.
- (3) The Minister may make Regulations prescribing—
 - (a) the measures referred to in *subhead (1)(iii)* that are necessary and appropriate to protect the rights of the child;
 - (b) any other measures or actions that a member of the Garda Síochána must take to safeguard children who are subject to powers under this Bill.
- (4) In this Head, “appropriate person” means a parent or guardian of the child or, where a parent or guardian of the child cannot be contacted, another adult reasonably named by the child.

Explanatory note

The aim of this Head is to provide additional safeguards for the treatment of children. The Children Act 2001 already provides certain protections for the treatment of children in criminal investigations and in Garda custody. The purpose of this Head is to provide similar protections for the use of Garda powers, other than those provided for under the Children Act, in respect of children, while ensuring that criminal investigations are not unduly hindered.

Subhead (1) aims to ensure that an appropriate person is notified before, or as soon as possible after, any of the powers under the Act are exercised in respect of a child. The subhead is without prejudice to section 58 of the Children Act 2001 which already provides for a child’s parent or guardian to be notified on the arrest of a child. This subhead also provides that the use of the power shall be recorded and that the Garda exercising the power shall ensure that the person is not prejudiced by the fact that he or she is unable to understand or exercise his or her rights on his or her own behalf.

Subhead (2) provides that a child cannot consent to the use of a Garda power (where it requires consent) without also having the consent of a parent or guardian of the child.

Subhead (3) is a separate regulation making power for addressing the use of Garda powers in respect of children.

Subhead (4) provides a definition for “appropriate person”.

Head 8 – Protection of the Rights of Persons with Impaired Capacity

Provide that:

- (1) Where a member of the Garda Síochána is exercising, or considering exercising any of the powers provided for under this Act, and he or she knows or suspects that the person in respect of whom the power is being, or is to be, exercised is a person with impaired capacity the member may take any measures which he or she deems necessary and appropriate to protect the rights of the relevant person that the person may not be capable of taking himself or herself.
- (2) The Garda Commissioner, with the consent of the Minister, may issue guidelines for the treatment of persons with impaired capacity when such persons are subject to the powers provided for in this Bill.
- (3) The guidelines referred to in *subhead (2)* may, in particular, include—
 - (a) the steps which a member of the Garda Síochána may take to identify a person with impaired capacity;
 - (b) the measures referred to in *subhead (1)* that are necessary and appropriate to protect the rights of such persons;
 - (c) any other measures which a member of the Garda Síochána may take to safeguard persons with impaired capacity who are subject to enforcement powers under this Bill.
- (4) In this Head, “impaired capacity” includes any person who is at the time at which the power is being or is to be exercised in relation to him or her—
 - (a) suffering from a disorder of the mind, intellectual disability or physical disability which renders him or her, at the time—
 - (i) unable to understand what is happening or to make decisions;
 - (ii) unable to understand a caution;
 - (iii) unable to act in their own best interests during interview;
 - (iv) unusually suggestible or compliant; or
 - (v) unable to communicate effectively with members of the Garda Síochána.
 - (b) under the influence of any substance which renders him or her, at the time, unable to understand what is happening or to make decisions affecting his or her rights or treatment.

Explanatory note

The aim of this Head is to provide additional safeguards for the treatment of persons with impaired capacity while ensuring that criminal investigations are not unduly hindered.

The proposed definition of a person with impaired capacity is intended to include persons who are unable to understand what is happening at the time the power is being exercised against them either owing to a mental disorder or other mental health condition or because the person is under the influence of alcohol or drugs to the extent that the person is unable to understand what is happening or to make appropriate decisions to protect their rights. Because of the range of powers provided for in the Heads, some of which may be exercised at first contact and in

highly charged circumstances and the range of different impairments which may arise, it is considered appropriate that this should be addressed by way of guidelines that can address the different circumstances in the necessary detail and allowing for the necessary discretion on the part of Garda members on the ground.

Subhead (1) provides that a Garda may take any measures which he or she deems necessary and appropriate to protect the rights of a person with impaired capacity when exercising any of the powers under the Act in relation to that person.

Subhead (2) provides that the Garda Commissioner may issue guidelines for the treatment of persons with impaired capacity when such persons are subject to the powers provided for in this Act and subhead (3) provides that the guidelines may include the steps a member should take to identify a person with impaired capacity and the steps he or she may reasonably take to safeguard the person's rights.

Subhead (4) defines a person with impaired capacity so as to include both persons suffering from disorders of the mind or an intellectual disability that impair their capacity to understand the information given to them or to properly safeguard their rights and persons who are under the influence of any substance to the extent that at the time the person is incapable understanding information given to them or of safeguarding their rights. The definition draws on other legislation, such as the National Vetting Bureau (Children and Vulnerable Person Act 2012, the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014, the Criminal Law (Sexual Offences) Act 2017, legislation and codes of practice in the UK, as well as a submission made to the Smyth committee.

Part 3: Stop and Search

Head 9 – Power to stop and search for possession of prescribed articles

Provide that:

(1) Where a member of the Garda Síochána who is in—

- (a) a public place, or
- (b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

has reasonable grounds to suspect that a person is in possession of, or using or carrying, a relevant article, he or she may without warrant—

- (i) stop and search the person, or cause the person to be stopped and searched and, if he or she considers it necessary for that purpose, detain the person, or cause the person to be detained, for such time as is reasonably necessary for making the search, or
- (ii) stop and search, or cause to be stopped and searched, any vehicle in which he or she suspects that relevant article may be found and for the purpose of carrying out the search may, if he or she thinks fit, require the person who for the time being is in control of such vehicle (in this Head, the “driver”) to bring it to a stop and when stopped to refrain from moving it, or in case such vehicle is already stationary, to refrain from moving it.

(2) Where a member of the Garda Síochána decides to search a person under this Head, he or she may require the person to accompany him or her to a Garda custody facility for the purpose of being so searched at that facility.

(3) Where a member of the Garda Síochána decides to search a vehicle under this Head he or she may –

- (a) require the driver, pending the commencement of the search, not to remove from the vehicle, as may be appropriate, any substance, article or other thing,
- (b) where the place at which he or she finds the vehicle is in the member’s reasonable opinion unsuitable for such search, take the vehicle or cause it to be taken or require the driver forthwith to take the vehicle to a specified place which he considers suitable for such search,
- (c) require the driver to be in or on or to accompany the vehicle, as may be appropriate, for so long as is necessary to complete the search.

(4) Where a requirement is made of a person under this Head—

- (a) in case the requirement is a requirement mentioned in *paragraph (c) of subhead (3)*, if at any time while the requirement is in force the person of whom it was made is neither in nor on nor accompanying the vehicle in relation to which the requirement was made, he shall be guilty of an offence,
- (b) in case of any other requirement under this Head the person who fails to comply with the requirement shall be guilty of an offence.

(5) Where a requirement described in *paragraph (a)* of *subhead (3)* is made of a person, the search in relation to which the requirement is made shall be carried out as soon as is practicable.

(6) In this Head, “relevant article” means—

- (a) anything stolen or obtained unlawfully;
- (b) a controlled drug (within the meaning of section 2 of the Misuse of Drugs Act 1977) in contravention of the Misuse of Drugs Act 1977;
- (c) a firearm or ammunition in contravention of the Firearms Act 1925;
- (d) in a public place, any article in contravention of section 9 or 9A of the Firearms and Offensive Weapons Act 1990;
- (e) in a public place, a syringe, or any blood in a container intended by him or her unlawfully to cause or to threaten to cause injury to or to intimidate another; and
- (f) any article intended for use in the commission of an offence, if possession of that article in the said circumstances constitutes an offence.

Explanatory note

Head 9 provides a power for a member of the Garda Síochána to stop and search a person or a vehicle where the member has reasonable grounds to suspect the person has in his or her possession any one of a list of specified unlawful objects, listed in subhead (6). These objects include stolen goods, illegal drugs, firearms and offensive weapons, syringes and blood containers and any object which is intended for use in a theft or fraud offence (e.g. crow bar, computer hacking equipment, etc.). The power can be exercised in a public place or any other place where the Garda has a right to be at the time.

Subhead (2) provides that a member may take the person to a Garda custody facility or another suitable place if the place where the stop occurs is unsuitable for the search. This may be, for example, to protect the privacy of the person or because the location is unsafe or uncomfortable.

Subhead (3) provides that a member may require the person not to remove anything from the vehicle, to move the vehicle to a more suitable location for the search, or to remain with the vehicle until the search is completed. The Garda also has the power to move the vehicle to a more suitable place himself or herself.

Subhead (4) makes it an offence for a person to fail to comply with the requirements under subheads (2) or (3).

These provisions will replace similar powers in a range of other acts.

Head 10 – Power to search vehicles and persons in vehicles for evidence of offence

Provide that:

- (1) Where a member of the Garda Síochána who is in—
- (a) a public place, or
 - (b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

has reasonable grounds to suspect that an offence under *Schedule 2* has been, is being or is about to be committed, he or she may require a person to stop a vehicle with a view to ascertaining whether—

- (i) any person in or accompanying the vehicle has committed, is committing or is about to commit the offence, or
- (ii) evidence relating to the commission or intended commission of the offence by any person is in or on the vehicle or on any person in or accompanying it,

and the member may search the vehicle, and if whether before or after the commencement of the search, he or she suspects with reasonable grounds that any of the facts mentioned in *paragraph (i) or (ii)* above exists, he may search any person in or accompanying the vehicle.

- (2) Any reference in *subhead (1)* of this Head to an offence includes a reference to attempting or conspiring to commit the offence.

Explanatory note

Head 10 provides a power for a Garda to stop and search a vehicle and any persons in the vehicle where the member has reasonable grounds to suspect that a specified serious or terrorist offence is occurring or is about to occur for evidence of that offence. The Garda does not need to reasonably suspect that the vehicle or person being searched is involved in the offence. This power allows for random searches, for instance at roadblocks. The power can be exercised in a public place or any other place where the member is, at that time, entitled to be.

The provision is modelled on section 8 of the Criminal Law Act 1976 and will replace that provision. The wording has been changed slightly from section 8 to make it clear that a member has the power to require the vehicle to stop.

Head 11 – Right to be informed of the reason for a search

Provide that:

- (1) Prior to carrying out a search under *Head 9 or 10*, the member of the Garda Síochána conducting the search, shall inform, or cause to be informed, the person who is being, or is to be, searched—
 - (a) that he or she, or his or her vehicle as the case may be, is about to be searched;
 - (b) the reason or reasons for the search; and
 - (c) the legal basis for the search.

Explanatory note

Head 11 provides that a person must be informed that he or she is to be searched, why he or she is being searched and on what basis the Garda is entitled to do so. This right is a constitutional right established in the case of *DPP v Rooney* [1992]. The person must also be informed of the same information if his or her vehicle is being searched. The latter goes a little further than the rights currently established by the Court in *DPP (Higgins) v Farrell* [2009] which found that the legal basis was sufficient where a vehicle was concerned. It is, however, proposed here to extend to vehicles the right to be informed of the reasons for the search.

Head 12 – Record to be made of a search

Provide that:

- (1) A member of the Garda Síochána shall make a record of any search conducted under *Head 9 or 10*.
- (2) A record made under *subhead (1)* shall contain the following information—
 - (a) the name, address and date of birth of the person, where known;
 - (b) the time and date of the search;
 - (c) the reason for the search;
 - (d) the power under which the search was conducted;
 - (e) the outcome of the search; and
 - (f) such other information as is provided for in the Code of Practice under *Head 13*.
- (3) The person who is the subject of the search concerned shall be entitled to a copy of the record, on request in writing, at any time before the record is destroyed under *subhead (5)*.
- (4) Where a search results in the seizure of a prohibited article or evidence of an offence, the record made under *subhead (1)*, shall be retained in accordance with the procedures established in the Code of Practice under *Head 13*.
- (5) Where a search does not result in the seizure of a prohibited article or evidence of an offence, the record made under *subhead (1)*, shall be retained for a period established in the Code of Practice under *Head 13* and destroyed in accordance with the procedures established therein.

Explanatory note

The purpose of this Head is to provide that a record of all searches must be maintained.

Subhead (3) provides that the person who is the subject of the search is entitled to receive a record of the search if he or she asks for it.

Subheads (4) and (5) provide for the retention and destruction of the record of the search. These subheads may not be necessary here as they are to be prescribed in the Code of Practice under Head 13, and their inclusion in the Code of Practice is required by that Head.

Head 13 – Code of Practice on searches

Provide that:

- (1) The Commissioner shall, as soon as practicable after the commencement of this section and following consultation with—
 - (a) the Policing Authority
 - (b) the Garda Síochána Inspectorate, and
 - (c) the Irish Human Rights and Equality Commission,
 - (d) such other persons as the Commissioner considers appropriate,prepare for submission to the Minister a draft Code of Practice for the purposes of providing practical guidance for the carrying out of searches of persons and vehicles by members of the Garda Síochána, under *Heads 9 and 10*.
- (2) In particular, the Code of Practice referred to in *subhead (1)* shall set out—
 - (a) the circumstances in which a search may be conducted,
 - (b) the procedure to be followed in conducting a search,
 - (c) the scope and extent of the search,
 - (d) the particular safeguards to apply when the subject of a search is a child or a person with impaired capacity, and
 - (e) such other matters related to the search as the Commissioner deems appropriate.
- (3) In relation to the record of search, referred to in *Head 12*, the Code of Practice shall set out—
 - (a) the information to be recorded,
 - (b) the means of recording and storing the information,
 - (c) the circumstances under which the record may be retained, disclosed and destroyed and the procedures for such retention, disclosure and destruction.
- (4) When preparing a Code of Practice under this Head, the Commissioner shall have regard to the following—
 - (a) the obligation on members of the Garda Síochána to act with diligence and determination in the investigation of crime and the protection and vindication of the rights of victims and the protection of the public;
 - (b) the fact that every search of a person or his or her belongings is an interference in the person's right to privacy;
 - (c) any such search must be necessary and proportionate to the legitimate objectives to be achieved; and
 - (d) any decision to search a person or his or her vehicle must be based on fair and objective grounds that do not discriminate between persons on the basis of personal characteristics.
- (5) A Code of Practice prepared under this section shall be submitted to the Minister for approval.
- (6) The Minister may approve, or approve subject to modifications, a Code of Practice submitted to the Minister under *subsection (5)* and, when a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.
- (7)(a) A Code of Practice approved under this Head may be amended or revoked.

(b) Amendments to such a Code of Practice, other than amendments of a minor or technical nature, shall be submitted to the Minister for approval.

(c) If it is proposed to revoke a Code of Practice approved under this section, the proposed revocation shall be submitted to the Minister for approval.

(8) The Minister may approve, or approve subject to modifications, an amended Code of Practice submitted to the Minister under *subhead (7)(b)* and, when such a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.

(9) The Minister may approve the revocation of a Code of Practice.

(10) A Code of Practice, or an amended Code of Practice, approved by the Minister under this section shall be made publicly available by the Commissioner.

(11) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall not of itself render that person liable to any criminal or civil proceedings or of itself affect the admissibility in evidence thereby obtained.

(12) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall render him or her liable to disciplinary proceedings.

Explanatory note

Head 13 provides that a Code of Practice shall be made by the Commissioner with the approval of the Minister. It is based on section 157 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.

Subhead (1) provides for the power. Subheads (2) and (3) sets out some of the requirements of that Code of Practice, in particular the procedures for conducting searches and provisions around the recording of searches. Subhead (4) aims to provide the principles which govern the making of Codes of Practice. Subheads (5) to (10) relate to the approval, modification and revocation of Codes of Practice, and their publication. Subheads (11) and (12) are based on section 164 of the 2014 Act, and section 7 of the Criminal Justice Act 1984.

Part 4 – Search of premises

Head 14 – Interpretation [Part 4]

Provide that:

In this *Part*—

“applicant” means—

- (a) in the case of an application referred to in *Head 15(1)(a)*, or *Head 21(2)(a)(i)(I)* or *(II)*,
 - (i) a member of the Garda Síochána,
 - (ii) an authorised officer of the Competition and Consumer Protection Commission, or
 - (iii) a designated officer of the Office of the Director of Corporate Enforcement;
- (b) in the case of an application referred to in *Head 15(1)(b)*—
 - (i) an authorised officer of the Competition and Consumer Protection Commission, or
 - (ii) a designated officer of the Office of the Director of Corporate Enforcement;
- (c) in the case of an application referred to in *Head 21*, a member of the Garda Síochána.

“live television link” means any communication technology facility which the Court is satisfied is of sufficient integrity and reliability to enable a person who is not present before the Court to see and hear the Court and to be seen and heard by the Court;

“material” means any tangible or intangible thing and includes a copy of the thing;

“place” means a physical location and includes—

- (a) a dwelling, residence, building or abode,
- (b) a vehicle, or
- (c) any land, and any building, structure or any other thing constructed, erected, placed or made on, in or under any land.

Explanatory note

The definition of “applicant” sets out who can apply for a search warrant. The Law Reform Commission proposed that their Bill apply not just to An Garda Síochána, but also to all of the agencies who currently have a power to apply for search warrants. It is intended that this Part of the Bill will apply to AGS, the CCPC and the ODCE. This definition provides that a member of An Garda Síochána not below the rank of sergeant or relevant officers of the CCPC and the ODCE can apply for a warrant where there is evidence of an offence. A warrant which is required for the purposes of facilitating the applicant in the performance of his or her functions (where there is no requirement of reasonable suspicion of evidence of an offence) can be applied for by relevant officers of the CCPC and the ODCE.

The definition of “live television link” is relevant to Head 21 relating to the issuance of warrants in urgent cases. It allows warrants to be applied for using video link.

The definition of “material” is relevant to the provisions setting out what can be searched for and seized.

The definition of “place” is taken from section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 with the addition of paragraph (f) which is taken from section 26 of the Misuse of Drugs Act 1977 and amended to rely on the definition of vehicle contained in Head 2.

Head 15 – Application and issuing of warrant

Provide that:

(1) If a judge of the District Court is satisfied by information on oath and in writing provided by an applicant—

- (a) that there are reasonable grounds for suspecting that evidence of or relating to the commission of—
 - (i) an indictable offence may be found at a specified place
 - (ii) a summary offence under the provisions of any enactment specified in *Schedule 3* may be found at a specified place,
- (b) that a search warrant is required to facilitate the applicant in the performance of his or her functions under the provisions of any enactment specified in *Schedule 4*,

the judge may issue a search warrant for the search of that place.

(2) Subject to *Head 21*, an application for a search warrant shall be made using the search warrant information form which shall be prescribed by rules of court.

(3) The applicant shall provide any additional information which the judge of the District Court requests so as to ground the application.

(4) A search warrant issued under this section shall be in the prescribed form.

(5) A designated officer of the Director of Corporate Enforcement or an authorised officer of the Competition and Consumer Protection Commission may apply for a warrant under *subhead (1)(a)* only where the offence concerned relates to the functions of that body.

(6) A judge of the District Court may issue a search warrant under this Head without the applicant having appeared in person where the Court is satisfied that the circumstances of urgency giving rise to the immediate need for a search warrant mean that the delay involved in the applicant appearing in person would frustrate the effective execution of the warrant.

(7) In an application referred to in *subhead (6)*, the applicant shall communicate orally with the Court by live television link or telephone.

(8) Where an applicant has made an application referred to in *subhead (6)*, the applicant shall, as soon as practicable, and, in any case, not later than 24 hours after the warrant has been issued, file a written record of the warrant application with the Court.

Explanatory note

This Head provides for section 3 and part of section 4 of the LRC draft Bill.

Subhead (1) sets out the circumstances under which a search warrant can be granted.

At present, a search warrant can be granted under section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 where there is a reasonable suspicion that evidence relating to an arrestable offence is to be found at any place. There are, in addition, numerous provisions on the statute book providing for the granting of search warrants in relation to

specific offences. The Law Reform Commission recommends the introduction of a general search warrant provision, under which a warrant can be granted in the following circumstances:

- Where there is a reasonable suspicion that evidence relating to any indictable offence can be found at a place (paragraph 2.40 of the Report).
- Where there is a reasonable suspicion that evidence relating to certain summary offences can be found at a place. This will only apply to summary offences for which there is already a search warrant provision on the statute book (paragraph 2.40 of the Report).
- Where a search warrant is required to facilitate the applicant in the performance of their functions. This is to provide for search warrants, where no offence is suspected (paragraph 2.71 of the Report). The General Scheme applies this to the CCPC and ODCE.

Subhead (2) implements the recommendation at paragraph 3.63 of the Report that a standard search warrant form should be used when applying for a search warrant.

Subhead (3) implements the recommendation at paragraph 3.110 that the District Court may request further information from the applicant.

Subhead (4) implements the recommendation at paragraph 4.56 of the Report that a search warrant shall be issued in the prescribed form.

Subhead (5) is intended to make it clear that officers of the ODCE or CCPC may apply for a warrant under subhead (1) only for offences under their remit and not for other offences.

Subhead (6) provides that applications for warrants may be made electronically in urgent circumstances. This subhead, and subheads (7) and (8), are based on section 9 of the Law Reform Commission's draft Bill, but provide for the application to be made to a judge of the District Court, rather than the High Court.

Head 16 – Powers under search warrant

Provide that:

- (1) A warrant under *Head 15* shall be expressed to and shall operate to authorise a named member of the Garda Síochána, an authorised officer of the Competition and Consumer Protection Commission, or a designated officer of the Office of the Director of Corporate Enforcement, as the case may be, (in this Bill, referred to as “the person acting under the authority of the warrant”), accompanied by such member or members of the Garda Síochána or persons or both as the person acting under the authority of the warrant considers necessary—
- (a) to enter, at any reasonable time or times, within the validity period of the warrant, the place named on the warrant,
 - (b) to search the place,
 - (c) where the person acting under the authority of the warrant is a member of the Garda Síochána, to search any persons present (which power may also be exercised by a person accompanying the person who is also a member of the Garda Síochána), and
 - (d) to seize any material found at that place or in the possession of a person present at the place at the time of the search which—
 - (i) the person acting under the authority of the warrant reasonably believes to be evidence of, or relating to, the commission of an offence to which the search warrant relates (and the material so seized may be retained for use in any criminal proceedings,), or
 - (ii) may be seized in accordance with the provisions of an enactment listed in *Schedule 4*,
 - (e)
 - (i) to require any person present at the place where the search is carried out to give to him or her his or her name and address,
 - (ii) to request assistance from persons present so as to gain access to material sought under the search warrant,
 - (iii) to operate any computer at the place which is being searched or cause any such computer to be operated by a person accompanying the person acting under the authority of the warrant, including by use of any password or other information found in the course of the search
 - (iv) to require any person at that place to provide to the authorised officer any books, documents or records which are in that person’s power or control, if the books, documents or records are accessible from that place,
 - (v) to require any person at that place who appears to him or her to have access to or to have under his power or control the information held in any such computer or which can be accessed by the use of that computer—
 - (I) to give to him or her any password or encryption key necessary to operate it,
 - (II) to otherwise enable him or her to examine the information accessible by the computer in a form in which the information is visible and legible,
 - (III) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.
- (3) The authority to seize material under this section includes the authority—
- (a) to make and retain a copy of any document, record or electronically stored information,

- (b) where necessary, to use electronic equipment to [search for and] copy electronically stored information, and
- (c) where necessary, to seize and retain any computer or other storage medium in which any record is kept.

(4) In this Head—

“computer” means any electronic device used for the information storage or retrieval and includes a mobile phone or any other electronic means of information storage or retrieval.

“computer at the place that is being searched” includes any other computer, whether at the place being searched or at any other place, which is lawfully accessible by means of that computer.

Explanatory note

This Head sets out the powers that can be exercised by a person executing a search warrant. It reflects part of sections 4 and 6 of the LRC draft Bill.

Subhead (1) allows the warrant to be executed by ‘a named member of the Garda Síochána’. This reflects existing search warrant provisions, including section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

This Head allows the person executing the warrant to be accompanied by other persons, as is currently the case in many existing search warrant provisions. The Law Reform Commission had recommended that authorisation be sought for accompanying persons at the time of the issuing of the warrant. However, the consultation process indicated that this requirement would not be practicable.

Paragraph (a) allows the person to enter at any reasonable time or times. The Law Reform Commission recommended that a provision requiring a warrant to be executed at a ‘reasonable time’. This requirement is retained here, on the basis that what is to be considered a reasonable time will be determined according to the circumstances. It may be reasonable and necessary to enter a place at night time in certain circumstances. On this basis, it not considered necessary to include the proposed provision for an exception to be granted to this requirement.

Paragraph (c) allows a Garda to search persons present at the place. This power is common in existing search warrant provisions and was recommended by the Law Reform Commission at paragraph 5.77 of its Report.

Paragraph (d) provides for a power of seizure, of any material that is evidence of an offence. Where the warrant has been issued to a person for the performance of their functions, the person may seize anything that may be seized in accordance with the relevant legislation.

Paragraph (e) implements the recommendations of the Law Reform Commission that a person executing a search warrant should have certain powers in relation to the persons present at the place. These include the power to request a person’s name and address and the power to request a person’s assistance in gaining access to materials. It also includes the power to require a person to give passwords, and to produce material in a visible and legible form. Similar powers are provided in many existing search warrant provisions, including the Criminal Justice (Theft and Fraud Offences) Act 2001. They are not provided for under section 10 of the Criminal

Justice (Miscellaneous Provisions) Act 1997, and as such, this power is being extended to a much wider range of offences. The words in “including by use of” make it clear that the person searching may use passwords or other information that they have found themselves during the course of the search- for example passwords found on mobile phones- to access other devices. Paragraph (e)(iv) includes a power that is currently provided for under section 37 of the Competition and Consumer Protection Act 2014 to compel the production of material under a person’s power or control, but with the qualification that they must be accessible to the search site- as a search warrant is primarily for the search of a place.

Subhead (3) is from the Criminal Justice (Theft and Fraud Offences) Act 2001 and provides that the power to seize includes a power to make and seize copies of documents, to copy electronically stored material, and to seize devices. The words in square brackets make it clear that it is possible to use electronic equipment to search for material. This would include a situation where the person searching uses their own devices to connect to computers on the search site to search for and copy material.

Subhead (4) provides a definition of computer. The term is not defined in the equivalent provision of the Criminal Justice (Theft and Fraud Offences) Act 2001. The proposed definition is taken from section 133 of the Finance Act 2001, inserted by the Finance Act 2015. It also provides for a definition of “computer at the place that is being searched”. This is taken from the Criminal Justice (Offences Against Information Systems) Act 2017.

Head 17 – Period of validity of search warrant

Provide that:

(1) Subject to *subheads (3) and (6)*, the period of validity of a warrant issued under *Head 15* shall be 7 days from its date of issue.

(2) An applicant may, during the period of validity of a search warrant apply to the District Court for an order extending the period of validity of the warrant and such an application shall be grounded on information on oath and in writing provided by the applicant stating, by reference to the purpose for which the warrant was issued, the reasons why the applicant considers the extension to be necessary.

(3) If the District Court is satisfied that there are reasonable grounds for believing, that further time is needed so that the purpose or purposes for which the warrant was issued can be fulfilled, the judge may make an order extending the period of validity of the warrant by a period of 7 days and, cause the warrant to be endorsed accordingly.

(4) No more than 3 orders extending the validity of a search warrant under *subhead (3)* shall be made.

(5) Nothing in the preceding subsections prevents a District Court from issuing, on foot of a fresh application made under *Head 15*, a further search warrant under that Head in relation to the same premises.

(6) The period of validity of a warrant issued under—
(a) *Head 15(1)(a)* to a member of an Garda Síochána where the offence referred to in that Head is an offence under the Misuse of Drugs Act 1977, or
(b) *Head 15(1)(b)* to an authorised officer of the Office of the Director of Corporate Enforcement,
shall be 30 days.

Explanatory note

Subhead (1) implements the recommendation in paragraph 5.05 of the Report that the standard validity period of a search warrant should be seven days. This is the position in section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

Subheads (2) to (4) implements the recommendation in paragraph 5.15 of the Report that there should be a procedure for extending the validity period of the warrant where necessary. An extension can be granted if the District Court is satisfied that there are reasonable grounds for believing that further time is needed to fulfil the purpose for which the warrant was granted.

Subhead (5) provides that this section does not prejudice the power of the District Court to issue a further warrant in relation to the same premises.

Subhead (6) implements the recommendation at paragraph 5.19 of the Report that longer validity periods may be required for certain investigations. This will apply to warrants issued to authorised officers of the ODCE.

Head 18 – Right to be informed of search

Provide that:

- (1) Subject to *subhead (2)*, a person acting under the authority of a warrant shall have the search warrant in his or her possession and show it to the occupier of the place named in the warrant who is present at that place prior to the commencement of the search.
- (2) Where a search warrant has been issued following an application to a judge of the District Court by electronic means, the person acting under the authority of the search warrant shall have in his or her possession and show to the occupier of the place named in the warrant either of the following—
 - (a) a search warrant transmitted from the judge of the District Court to the applicant by reliable electronic means, or
 - (b) a printout of a search warrant transmitted from the judge of the District Court to the applicant by reliable electronic means.
- (3) A person acting under the authority of a warrant shall provide a notice to the occupier of the place named in the warrant who is present at that place setting out:
 - (a) a summary of the powers which may be exercised under *Head 16*,
 - (b) an explanation of the rights and obligations of the occupier and owner of any property seized,
 - (c) an explanation of the procedure for seizing material under the search warrant,
 - (d) an explanation that reasonable force may be used, if necessary, during the course of the execution of the warrant, and
 - (e) a statement that any material seized will be securely wrapped and labelled and securely stored when removed from the location .
 - (f) an explanation of the offence under *Head 67*, and
 - (g) an explanation of the procedure under *Head 19*.
- (4) Where a copy of the search warrant is not given to the occupier or person in control of the place in accordance with *subhead (1)*, the occupier or person in control of the place may apply to the District Court within 7 days for a copy of the warrant.
- (5) A person acting under the authority of a search warrant issued under *Head 15* or *Head 21* shall—
 - (a) ensure that any material seized during the search shall be secured and clearly marked before being removed from the place, and
 - (b) make an inventory of any material seized,
 - (c) as soon as practicable after any material is seized, provide the occupier or person in control of the place with an inventory of the material seized, and
 - (d) if some of the material is returned, amend the inventory to reflect this.

Explanatory note

This Head relates to the right of the occupier to be informed about the search. It consists of provisions implementing the following recommendations of the Law Reform Commission:

Subhead (1) implements the recommendation at paragraph 4.78 of the Report that the occupier should be shown a copy of the warrant on entry to the premises.

Subhead (2) implements the recommendation at paragraph 5.79 of the Report that, where the warrant has been issued under the urgent procedure, the person can show the occupier the warrant on a device or a printed copy.

Subhead (3) implements the recommendation at paragraph 5.63 that the occupier should be given an occupiers' notice, setting out information such as procedures to be followed and relevant rights and obligations, etc.

Subhead (4) provides that the occupier may apply to the District Court if they are not given a copy of the warrant.

Subhead (5) implements the recommendation at paragraph 5.122 of the Report that an inventory of the material seized should be made and a copy should be given to the occupier.

Head 19 – Saving for privileged information

Provide that:

(1) Subject to *subhead (2)*, nothing in *Head 16* shall compel the disclosure by any person of privileged material or authorise the seizure or examination of material that is privileged by or under any enactment or rule of law (in this Head, referred to as “privileged material”).

(2) The disclosure of material may be compelled, or possession of it seized, pursuant to the powers in *Head 16*, notwithstanding that it is apprehended that the material is privileged material, provided the compelling of its disclosure or the seizing of possession is done by means whereby the confidentiality of the material can be maintained pending the determination by the court of the issue as to whether the material is privileged material.

(3) Without prejudice to *subhead (4)*, where, in the circumstances referred to in *subhead (2)*, material has been disclosed or material seized pursuant to the powers in this section, the person—

- (a) to whom such material has been so disclosed, or
- (b) who has seized possession of it,

shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under *subsection (4)* in relation to the matter), securely seize any material, store it in a safe and secure place and (unless otherwise agreed in writing by the person to whom the material has been disclosed or who has seized possession of the material, and the person to whom the privilege applies) apply to the High Court for a determination as to whether the material is privileged material and an application under this subsection shall be made within 14 days after the disclosure or seizing of possession.

(4) A person who, in the circumstances referred to in *subhead (2)*, is compelled to disclose information, or from whose possession material is seized, pursuant to the powers in *Head 16*, may apply to the Court for a determination as to whether the material is privileged material.

(5) Pending the making of a final determination on an application under *subhead (3)* or *(4)*, the court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

- (a) the preservation of the material, in whole or in part, in a safe and secure place in any manner specified by the court,
- (b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—
 - (i) examining the material, and
 - (ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the material is privileged material.

(6) An application under *subhead (3)* or *(4)* shall be by motion on notice and may, if the court directs, be heard otherwise than in public.

Explanatory note

This is the text of section 7 of the LRC draft Bill. It sets out a procedure to be followed where potentially privileged material is seized. It is based on section 795 of the Companies Act 2014 but extends to all forms of privilege, not just legal privilege.

Subhead (1) implements the recommendation at paragraph 5.99 of the Report that the legislation should explicitly state that where privileged material is found during the course of a search, such material may generally not be examined or seized. Privileged material is protected under the common law at present, and a number of existing search warrant provisions explicitly prohibit the seizure of material that is legally privileged.

Subhead (2) sets out an exception to the rule in subhead (1). It allows for potentially privileged material to be seized where it is done in such a way as to preserve the confidentiality of the material pending determination by a court as to whether it is in fact privileged.

Subhead (3) requires the person who has seized the material to secure the material and apply within 7 days to the High Court for a determination. This subsection has been amended so that a High Court application is not mandatory where the parties have come to an agreement. Alternatively, the person from whom the material is seized may apply to the High Court before that under subhead (4).

Under subhead (5), the Court may give directions about how the material is to be dealt with until a determination has been made, or appoint a person to examine the material and prepare a report to the court to assist it in making its determination.

Subhead (6) sets out procedural aspects of the application. It provides that it is to be made by motion on notice and may be heard otherwise than in public.

Head 20 – Extended power of seizure

Provide that:

- (1) Without prejudice to *subsection (2)*, where—
- (a) a person acting under the authority of a search warrant issued under *Head 15* or *21* finds anything at or in the custody or possession of any person found on the premises named in the warrant that the person has reasonable grounds for believing may be, or may contain, material which he or she would be entitled to seize in accordance with *Head 16*, and
 - (b) it is not reasonably practicable for a determination to be made on the premises—
 - (i) whether what he or she has found is material that he or she is entitled to seize under the warrant, or
 - (ii) the extent to which what he or she has found contains material that he or she is entitled to seize under the warrant,
- the person’s power of seizure under the warrant shall include power to seize so much of what he or she has found as it is necessary to remove from the premises to enable that to be determined.

- (2) Where—
- (a) a person acting under the authority of the warrant finds material at, or in the custody or possession of any person found on the premises named in the warrant which he or she would be entitled to seize in accordance with *Head 16* (“seizable material”) but for its being comprised in something else that he or she has (apart from this subsection) no power to seize, and
 - (b) it is not reasonably practicable for the seizable material to be separated, on those premises, from that in which it is comprised,
- the person’s powers of seizure shall include power to seize both the seizable material and that from which it is not reasonably practicable to separate it.

Explanatory note

This Head relates to the judgment of the Supreme Court in *CRH v. CCPC*, which concerns the seizure of material that consists of both relevant and irrelevant material. Subheads (1) and (2) provide for an extended power of seizure, modelled on a similar provision in the Companies Act 2014. This clarifies that where ‘mixed’ material is seized the seizure is lawful, if it is not reasonably practicable to separate the material onsite, or if it is not reasonably practicable to determine whether any material is material that the person is entitled to seize. In the case of a seizure by a member of the Garda Síochána, this will mean where it is not possible to determine whether there are reasonable grounds to suspect it to be evidence relating to the commission of an offence. There is an implicit obligation to take reasonable steps to only take material which is material which the person is entitled to seize.

This section does not deal with how the material is to be dealt with after it has been seized. It is intended that this is a matter that could be addressed in the codes of practice.

The Law Reform Commission’s Report did not deal expressly with this issue (it predated the CRH judgment). The LRC draft Bill included a section modelled on sections 787 and 788 of the Companies Act, which provides for an extended power of seizure and sets out a procedure to deal with material seized pursuant to that extended power. As the consultation process indicated that there were difficulties with that procedure, and as it was not clear how to best

apply it in the context of a seizure by a member of the Garda Síochána, it has not been included in this draft General Scheme.

Head 21 – Application for search warrant in urgent circumstances

Provide that:

(1) A member of the Garda Síochána not below the rank of superintendent may issue a search warrant in exceptional circumstances if he or she is satisfied—

- (a) that the search warrant is necessary for the proper investigation of an offence, and
- (b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under *Head 15* for the issue of the warrant.

(2) Where an applicant applies to a member of the Garda Síochána for a search warrant under *subhead (1)*, the applicant shall provide information that there are reasonable grounds for suspecting that evidence of or relating to—

- (a) an indictable offence may be found at a specified place, or
- (b) a summary offence under the provisions of any enactment specified in *Schedule 3* may be found at a specified place.

(3) A warrant under this section shall be expressed to and shall operate to provide an applicant with the same authority as is provided for in *Head 16*.

(4) The period of validity of a warrant issued following an application under this section shall be 24 hours.

- (5)
- (a) A member of the Garda Síochána not below the rank of superintendent may issue a search warrant under this section only if he or she is independent of the investigation of the offence in relation to which the search warrant is being sought.
 - (b) In this subhead “independent of”, in relation to the investigation of an offence, means not being in charge of, or involved in, that investigation.

(6) A member of the Garda Síochána not below the rank of superintendent who issues a search warrant under this section shall, either at the time the warrant is issued or as soon as reasonably practicable thereafter, record in writing the grounds on which the warrant was issued, including how he or she was satisfied as to the matters referred to in *subhead (2)*.

Explanatory note

This Head allows for an application to be made by a member of the Garda Síochána to a Garda superintendent for a warrant, to be issued in urgent circumstances.

At present, several pieces of legislation provide that a search warrant can be issued by a Garda superintendent or peace commissioner in urgent cases. The Law Reform Commission recommended, at paragraph 8.23 of its Report that search warrants should only be issued by a court, which would ordinarily be a judge of the District Court, but that provision would be made for an application for a search warrant to be issued by the High Court in urgent cases. Following consultation on the feasibility of this approach, it is proposed to retain the power of a Garda superintendent to issue warrants, but to limit to cases where exceptional circumstances give rise to a need for a warrant to be issued urgently. The wording of this Head is based on the Prevention of Corruption (Amendment) Act 2001 (which was repealed by the Criminal

Justice (Corruption) Act 2018), the Misuse of Drugs Act 1977 and the Criminal Justice (Drug Trafficking) Act 1996 but emphasises that this power must only be exercised in exceptional circumstances. Head 16 also allows a person to apply to a judge of the District Court electronically in urgent circumstances.

Subhead (1) allows a Garda superintendent to issue a warrant in urgent circumstances.

Subhead (2) requires the person applying for a warrant to provide information on oath of a reasonable suspicion that evidence of an offence is to be found at a place or that the search warrant is required for the performance of the person's functions.

Subhead (3) clarifies that a warrant under this Head confers the same powers on the person as a warrant issued in the usual way does.

Subhead (4) provides for a shorter validity period for warrants issued under this Head.

Subhead (5) requires the superintendent who issues the warrant to be independent of the investigation; this is a constitutional requirement arising from the *Damache* judgment.

Subhead (6) requires the superintendent who issues the warrant to record in writing the grounds on which the warrant was issued.

Head 22 – Code of Practice on search warrants

Provide that:

- (1) The Commissioner shall, as soon as practicable after the commencement of this section and following consultation with—
 - (a) the Policing Authority
 - (b) the Garda Síochána Inspectorate, and
 - (c) the Irish Human Rights and Equality Commission,prepare for submission to the Minister a draft Code of Practice for the purposes of providing practical guidance for the carrying out searches of places under a warrant issued under this Part.
- (2) In particular, the Code of Practice referred to in *subhead (1)* shall set out—
 - (a) the scope and extent of a search of a place,
 - (b) the scope and extent of a search of persons present at the place,
 - (c) the particular safeguards to apply when the subject of a search is a child or a vulnerable person,
 - (d) procedures for dealing with material that has been seized where representations have been made that the material is private and not relevant to the offence for which the investigation has been carried out, and
 - (e) such other matters related to the search as the Commissioner deems appropriate.
- (3) When preparing a Code of Practice under this Head, the Commissioner shall have regard to the following—
 - (a) the obligation on members of the Garda Síochána to act with diligence and determination in the investigation of crime and the protection and vindication of the rights of victims and the protection of the public;
 - (b) the fact that a search of a place may involve an interference in a person’s right to privacy;
 - (c) the fact that a search of any dwelling is an interference in the inviolability of the dwelling;
 - (d) any such search must be necessary and proportionate to the legitimate objectives to be achieved.
- (4) A Code of Practice prepared under this section shall be submitted to the Minister for approval.
- (5) The Minister may approve, or approve subject to modifications, a Code of Practice submitted to the Minister under *subhead (4)* and, when a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.
- (6)(a) A Code of Practice approved under this section may be amended or revoked.
 - (b) Amendments to such a Code of Practice, other than amendments of a minor or technical nature, shall be submitted to the Minister for approval.
 - (c) If it is proposed to revoke a Code of Practice approved under this section, the proposed revocation shall be submitted to the Minister for approval.

(7) The Minister may approve, or approve subject to modifications, an amended Code of Practice submitted to the Minister under *subhead (6)(b)* and, when such a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.

(8) The Minister may approve the revocation of a Code of Practice.

(9) A Code of Practice, or an amended Code of Practice, approved by the Minister under this section shall be made publicly available by the Commissioner.

(10) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall not of itself render that person liable to any criminal or civil proceedings or of itself affect the admissibility in evidence thereby obtained.

(11) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall render him or her liable to disciplinary proceedings.

Explanatory note

This Head requires the Commissioner to prepare, for the Minister's approval, a statutory Code of Practice for the carrying out of searches by members of the Garda Síochána under this Part.

This was recommended by the Commission on the Future of Policing and the Law Reform Commission's Report. It is based on section 157 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014. Subhead (1) provides for the power. Subhead (2) sets out some of the requirements of that Code of Practice. Subhead (3) aims to provide the principles which govern the making of the codes. Subheads (4) to (9) relate to the approval, modification and revocation of codes of practice, and their publication. Subheads (10) and (11) are based on section 164 of the 2014 Act, and section 7 of the Criminal Justice Act 1984.

Part 5 – Arrest

Head 23 – Arrest without warrant by member of the Garda Síochána

Provide that:

- (1) Subject to *subhead (3)*, a member of the Garda Síochána may arrest without warrant anyone who is or whom he or she suspects on reasonable grounds to be in the act of committing an offence.
- (2) Subject to *subhead (3)* and *Head 34*, where a member of the Garda Síochána suspects on reasonable grounds that an offence has been committed, he or she may arrest without warrant anyone whom the member has reasonable grounds to suspect to be guilty of the offence.
- (3) An arrest for an offence that is not a serious offence may only be effected by a member of the Garda Síochána under this Head if he or she has reasonable grounds to believe that the arrest is necessary for one or more of the following purposes—
 - (a) preventing harm,
 - (b) preventing the continuation of the offence or another offence,
 - (c) preventing the person from obstructing a member of the Garda Síochána or any other person exercising powers under an enactment, in exercising his or her duties, including in the circumstances referred to in *Head 67*,
 - (d) ensuring the person appears before the court,
 - (e) preventing interference with witnesses or evidence, and
 - (f) to charge the person with the offence.
- (4) This Head shall not affect the operation of any enactment restricting the institution of proceedings for an offence or prejudice any power of arrest conferred by law apart from this section.

Explanatory note

This Head sets out a general power of arrest. The general power of arrest will apply to all offences. It is intended that it will replace most existing powers of arrest on the statute book, although some existing powers in particular areas, such as road traffic, immigration and mental health, may need to be retained. It will be limited in that an arrest can only be made under certain conditions. This is the approach taken in a number of other common law jurisdictions.

Subhead (1) concerns a situation where a person is in the process of committing an offence. It provides that a member of the Garda Síochána can arrest a person who is, or he whom he or she has reasonable grounds to suspect to be, in the act of committing an offence. This is based on section 4(1) of the Criminal Law Act 1997. The power of a person other than a member of the Garda Síochána to arrest a person is dealt with in Head 25. The standard is ‘suspects on reasonable grounds’.

Subhead (2) deals with the situation where an offence has already been committed. It provides that where a member of the Garda Síochána has reasonable grounds to suspect that an offence has been committed, he or she may arrest anyone whom he or she has reasonable grounds to suspect to be guilty of the offence. This is based on subsection (3) of section 4 of the 1997 Act.

Subsection (2) of section 4 has not been provided for as, without the citizen's arrest power, it appears to be wholly covered by subsection (3).

Subhead (3) is broadly based on the UK PACE Act. It sets out that in order to arrest a person, certain conditions must be present in addition to a reasonable suspicion that the person has committed or is committing an offence. For any offence, the arresting member may arrest the person if he or she has reasonable grounds to believe that it is necessary to arrest the person for one of the reasons set out:

- to prevent harm, or 'to prevent the continuation of the offence or the commission of another offence'. The latter could include, for example, an arrest made for public order offences. Preventing injury is a ground for arrest under the PACE Act, and preventing the continuation of the offence is a ground under the Crimes Act 1914 (Australia).
- to prevent the person from obstructing a member of the Garda Síochána or another body in exercising their functions. Currently, there is a very large number of provisions on the statute book that provide a power of arrest for a member of an Garda Síochána where a person obstructs a member of AGS or an authorised officer of a regulatory body in the exercise of their functions.
- to ensure the person appears before court. This may arise, for example, if the member does not know the person's name or address or suspects that the person has given a name or address that is false or misleading.
- to ensure that the person does not interfere with witnesses or evidence.

In the case of a "serious offence", arrest can be made for any purpose. This reflects the position in section 4 of the 1997 Act currently.

Subhead (4) is taken from section 4 of the 1997 Act. It may need to be altered during drafting, depending on the approach taken to repeals and savings.

Head 24 – Arrest for breach of the peace

Provide that:

- (1) Where any person has reasonable grounds for believing that a person has committed, is committing or is about to commit, a breach of the peace contrary to common law, he or she may arrest the person without warrant.
- (2) In this Head, a breach of the peace means—
 - (a) any harm actually done or likely to be done to a person;
 - (b) any circumstance, whether in a public or a private place, where owing to the behaviour of some other person or persons, a person is in fear of being harmed through an assault, an affray or riot, unlawful assembly or other disturbance; or
 - (c) behaviour by any person which creates a real risk of a response which is disorderly and in consequence potentially violent whereby, through direct or indirect means, bystanders may be caught up in violence.
- (3) The common law power of arrest for breach of the peace is hereby abolished.

Explanatory note

This Head provides a statutory basis for the power of arrest for breach of the peace contrary to the common law. It attempts to capture the law as it currently exists (as established by *R v Howell* (1981) 3 All E.R. 383 and discussed in *Thorpe and Clifford* in this jurisdiction). Breach of the peace is a common law offence, and there is a power under the common law for a member of the Garda Síochána or any other person to arrest someone for an actual or anticipated breach of the peace.

Subhead (1) provides that any person may arrest without warrant a person whom he or she has reasonable grounds to believe is committing or about to commit a breach of the peace.

Subhead (2) sets out the definition of breach of the peace, established *R v Howell*, referred to above.

Subhead (3) provides for the abolition of the common law power of arrest for breach of the peace.

Head 25 – Arrest without warrant by other persons

Provide that:

(1) Subject to *subheads (3) and (4)*, any person may arrest without warrant anyone who is or whom he or she has reasonable grounds to suspect to be in the act of committing a serious offence.

(2) Subject to *subheads (3) and (4)*, where a serious offence has been committed, any person may arrest without warrant anyone who is or whom he or she has reasonable grounds to suspect to be guilty of the offence.

(3) An arrest other than by a member of the Garda Síochána may only be effected by a person under *subhead (1) or (2)* where he or she has reasonable grounds to suspect that the person to be arrested by him or her would otherwise attempt to avoid, or is avoiding, arrest by a member of the Garda Síochána.

(4) A person who is arrested pursuant to this Head, or *Head 24*, by a person other than a member of the Garda Síochána shall be transferred into the custody of the Garda Síochána as soon as practicable.

Explanatory note

This Head retains the elements of section 4 of the Criminal Law Act 1997 relating to arrest without warrant by other persons (usually referred to as ‘citizen’s arrest’).

Subhead (1) deals with situations where an offence is in the process of being committed. It allows a person to arrest without warrant any person who he or she has reasonable grounds to suspect to be in the act of committing a serious offence.

Subhead (2) deals with situations where an offence has already been committed. In that situation, a person can arrest without warrant a person whom he or she has reasonable grounds to suspect has committed the offence.

Subhead (3) provides that a person who is not a member of the Garda Síochána may only arrest a person if he or she has reasonable grounds to suspect the person would otherwise avoid arrest by a member of the Garda Síochána.

Under subhead (4), they must be transferred into the custody of the Garda Síochána as soon as practicable.

Head 26 – Arrest on warrant

Provide that:

A warrant for the arrest of a person or an order of committal may be executed by a member of the Garda Síochána notwithstanding that it is not in the member's possession at the time; but the warrant or order shall be shown to him or her as soon as practicable.

Explanatory note

The wording of this Head is taken from section 5 of the Criminal Law Act 1997 and will directly replace that section. It requires an arrest warrant or order of committal to be shown to the person.

Head 27 – Obligation to administer caution

Provide that:

- (1) A member of the Garda Síochána shall administer a caution to a person—
 - (a) where the member is questioning the person and has decided to charge the person with an offence,
 - (b) where the member is in the presence of the person and there are reasonable grounds for believing that the person is on the threshold of admitting involvement in an offence,
 - (c) where he or she arrests the person,
 - (d) prior to the commencement of an interview at a Garda custody facility,
 - (e) where an arrested person is to give a voluntary statement, prior to the commencement of that statement, or
 - (e) at any other occasion where the person is charged with, or informed that he or she may be prosecuted for, an offence.
- (2) Nothing in this Head shall prevent the administration of a caution in other circumstances or at other times.
- (3) A caution administered under *subhead (1) or (2)* shall be in the following terms:
“You are not obliged to say anything unless you wish to do so, but whatever you do say will be recorded and may be given in evidence.”.
- (4) In any circumstance referred to in *subhead (1)*, where a person makes a statement before there is time to caution him or her, the statement shall not be rendered inadmissible for that reason, but in such a case a caution should be administered as soon as possible.

Explanatory Note

Head 27 sets out when and under what circumstances a caution shall be issued.

Subhead (1)(a) and (d) are based on the Judges’ Rules and require a caution to be administered where a person is being questioned and the member has made up his or her mind to charge the person with an offence and at the commencement of an interview.

Subhead (1)(b) is based on *People (DPP) v Breen* [1995] WJSC-CCA 2054. That case laid down the principle that a caution should be given where a member of the Garda Síochána knew or ought to have known that a person was on the threshold of admitting involvement in an offence.

Subhead (1)(c) requires a caution to be administered at the point of arrest.

Subhead (1)(e) is based on the wording of Paragraph 16.2 – Code C of the PACE Act.

Subhead (2) makes it clear that this Head is not intended to limit the circumstances in which a caution may be issued.

Subhead (3) sets out the wording of the caution. In changing the wording of the caution, subhead (3) strengthens the use of electronically recorded interview evidence provided for

under section 57 of the Criminal Justice Act 2007 and further dispenses with the need for a member to take written notes when interviewing an accused person.

Head 28 – Right to information on arrest

Provide that:

- (1) Where a member of the Garda Síochána arrests a person, he or she shall inform the person as soon as practicable—
 - (a) that he or she is being arrested and of the reason for the arrest, and
 - (b) where applicable, that he or she is being taken to a Garda custody facility.
- (2) Prior to carrying out a search under *Head 30*, the member shall inform the person that he proposes to search him or her and the reason for the search.

Explanatory note

Head 28 requires the member to give certain information to the person being arrested.

Under subhead (1)(a), the member must inform the person of the reason for the arrest.

This requirement stems from case law (*Christie v Leachinsky* [1947] AC 573). It is also a requirement of Article 5 of the European Convention of Human Rights. There is further case law which elaborates on how the reason for the arrest must be conveyed to the person. This can be reflected in codes of practice.

Under Subhead 1(b), the person is to be informed that they are being taken to a Garda custody facility.

Where a member of the Garda Síochána is to carry out a search of an arrested person, subhead (2) requires the member to inform the person that he or she is being searched, the legal basis for the search and the reason for it. This requirement was established in case law (*People (DPP) v Kelly* [2012] IECCA 71; *People (DPP) v McFadden* [2003] 2 IR 105).

Head 29 – Entry and search of premises to effect an arrest

Provide that:

- (1) For the purpose of arresting a person on foot of a warrant of arrest or an order of committal, a member of the Garda Síochána may enter and search any premises (including a dwelling) where the person is or where the member, with reasonable grounds, suspects that person to be.

- (2) For the purpose of arresting a person without a warrant for a serious offence a member of the Garda Síochána may enter and search any premises, including a dwelling, where that person is or where the member, with reasonable grounds, suspects that person to be, and where the premises is a dwelling the member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the member to be in charge of the dwelling, enter that dwelling unless—
 - (a) he or she or another such member has observed the person within or entering the dwelling, or
 - (b) he or she, with reasonable grounds, suspects that before a warrant of arrest could be obtained the person will either abscond for the purpose of avoiding justice or will obstruct the course of justice, or
 - (c) he or she, with reasonable grounds, suspects that before a warrant of arrest could be obtained the person would commit a serious offence, or
 - (d) the person ordinarily resides at that dwelling.

Explanatory note

Head 29 repeats section 6 of the Criminal Law Act 1997 and will directly replace that section.

Subhead (1) provides a power for a member of the Garda Síochána to enter and search a premises in order to arrest a person on foot of a warrant or order for committal.

Subhead (2) provides a power for a member of the Garda Síochána to enter and search a premises in order to arrest a person without warrant, if the person is in the premises or the member has reasonable grounds to suspect that they are in the premises. It only applies where the person is to be arrested for a serious offence. If the premises is a dwelling, there are additional conditions for entry. One of the following must apply:

- the occupier or person who appears to be in charge of the house has given his or her permission;
- the person has been seen on the premises, or entering the premises;
- the member suspects that before an arrest warrant can be obtained, the person will abscond or obstruct the course of justice, or commit a serious offence;
- the person ordinarily resides at that dwelling.

Head 30 – Search and seizure on arrest

Provide that:

- (1) A member of the Garda Síochána, when effecting a lawful arrest, may search the arrested person for the purposes of seizing any dangerous weapon or other item found on that person which may be used to effect an escape, or to harm the arrested person or another person.
- (2) A member of the Garda Síochána, when effecting a lawful arrest, may search—
 - (a) the arrested person, and
 - (b) the immediate area where the person was arrested,

for the purposes of seizing any property in the possession or custody of the person arrested which the member reasonably believes to be evidence in support of the criminal charge upon which the arrest is made, if the member believes it necessary to do so to avoid the abstraction or destruction of that property.

- (3) The power of a member of the Garda Síochána to search an arrested person under common law is abolished.

Explanatory note

Subhead (1) of this Head makes statutory provision for the common law power for a member of the Gardaí to search for and remove from an arrested person anything which may be dangerous or used to effect an escape. This power was established in the case of *Bessell v Wilson* (1853) 20 L.T.(O.S.) 233. It is to be broadened to include anything that could be used to harm the person or another person.

Subhead (2) provides statutory provision for the common law power to search for evidence found in the area of arrest, established in *Dillon v O'Brien and Davis* (1887) 20 L.R. (I.R.) and *Jennings v Quinn* [1968] I.R. 305.

Subhead (3) provides for the abolition of the common law of members of the Garda Síochána to search an arrested person.

Head 31 – Rearrest for serious offence

Provide that:

(1) Where a person arrested on suspicion of having committed an offence is detained pursuant to *Head 44* and is released without any charge having been made against him or her, he or she shall not—

- (a) be arrested again in connection with the offence to which the detention related, or
- (b) be arrested for any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested suspected, or ought reasonably to have suspected him of having committed,

except on the authority of a warrant issued by a judge of the District Court who is satisfied on information supplied on oath by a member of the Garda Síochána not below the rank of inspector that either of the following cases apply, namely—

- (i) further information has come to the knowledge of the Garda Síochána since the person's release as to his or her suspected participation in the offence for which his or her arrest is sought, or
- (ii) notwithstanding that the Garda Síochána had knowledge, prior to the person's release, of the person's suspected participation in the offence for which his arrest is sought, the questioning of the person in relation to that offence, prior to his or her release, would not have been in the interests of the proper investigation of the offence.

(2) An application for a warrant under this Head shall be heard otherwise than in public.

(3) When issuing a warrant under *subhead (1)*, the judge concerned may order that the person concerned be brought before a judge of the Circuit Court or District Court on arrest or at any specified time or times during the period of detention authorised by *Part 6* and if, upon the person's being so brought before such a judge, he or she is not satisfied that the person's detention is justified, the judge shall revoke the warrant and order the immediate release from custody of the person.

(4) Notwithstanding *subhead (1)*, a person to whom that subsection relates may be arrested without warrant for any offence for the purpose of charging him or her with that offence forthwith.

Explanatory note

This Head sets out the circumstances under which a person can be arrested if they have already been arrested and detained for questioning, either for the same offence or for another offence which the arresting Garda member suspected him of or ought reasonably have suspected him of at the time of the arrest. It reflects the law as set out currently in section 10 of the Criminal Justice Act 1984 and the corresponding provisions in the Criminal Justice (Drug Trafficking) Act 1996 and the Criminal Justice Act 2007.

In general, an arrest is not permitted under these circumstances. There are three exceptions. First, an arrest warrant can be issued where further information has come to the knowledge of the Garda Síochána since the person's release as to his or her suspected participation in the

offence for which his or her arrest is sought. Second, a warrant can be issued where it would not have been in the interests of the investigation for the Garda Síochána to have questioned him or her about the offence for which the arrest is sought during the original detention. Third, the person can be arrested for the purpose of charging him or her with the offence forthwith. Detention subsequent to re-arrest is dealt with in Part 6.

Subhead (1) is based on section 10(1) of the 1984 Act, section 4(1) of the 1996 Act and section 51(1) of the 2007 Act. The warrant can be sought either from the District or Circuit Court, as is currently the case in relation to the 1996 and 2007 Acts; in the 1984 Act, the warrant can only be sought from the District Court.

Subhead (2) is based on section 10(1A) of the 1984 Act, section 4(1A) of the 1996 Act and section 51(1A) of the 2007 Act.

Subhead (3) is based on section 51(2) of the 2007 Act and section 4(2) of the 1996 Act. It does not appear in the 1984 Act.

Subhead (4) is based on section 10(2) of the 1984 Act, section 51(5) of the 2007 Act and section 4(5) of the 1996 Act. It allows the person to be re-arrested for the purpose of charge.

Head 32 – Arrest of prisoner or child detainee

Provide that:

(1) A member of the Garda Síochána may arrest a prisoner or child detainee on the authority of a judge of the District Court who is satisfied, on information supplied on oath by a member of the Garda Síochána not below the rank of inspector, that the following conditions are fulfilled—

- (a) there are reasonable grounds for suspecting that the prisoner or child detainee has committed a serious offence or serious offences other than the offence or offences in connection with which he or she is imprisoned, detained or remanded, as the case may be;
- (b) the arrest of the prisoner or child detainee is necessary for the proper investigation of the serious offence or serious offences that he or she is suspected of having committed; and
- (c) where the prisoner or child detainee has previously been arrested for the same serious offence or serious offences, whether prior to his or her being imprisoned, detained or remanded, as the case may be or under this section, further information has come to the knowledge of the Garda Síochána since that arrest as to the prisoner's or child detainee's, as the case may be, suspected participation in the offence or offences for which his or her arrest is sought.

(2) In this Head—

“child detainee” means a person who is detained in a children detention school, or on remand in a remand centre, pursuant to the Act of 2001;

“prison” means a place of custody, other than a place of detention in respect of the detention or remand of child detainees therein, administered by the Minister for Justice;

“prisoner” means a person who is in prison on foot of a sentence of imprisonment, on committal awaiting trial, on remand or otherwise.

Explanatory note

This Head is based on subsections (1) and (2) of section 42 of the Criminal Justice Act 1999 (as amended) and will replace those sections. It provides for the arrest of a prisoner or child detainee, where there are reasonable grounds for suspecting that they have committed an offence other than the offence for which they are detained. Detention for the proper investigation of an offence subsequent to an arrest under this section is dealt with in Part 6.

Subhead (1) allows a member of the Garda Síochána to arrest a prisoner or child detainee on the authority of a judge of the District Court. This can be given where there are reasonable grounds to suspect the person has committed an offence other than the offence for which they are detained and their arrest is necessary for the investigation of that offence. If the person has previously been arrested for the same offence, it is necessary that further information has come to the knowledge of An Garda Síochána in relation to the person's participation in the offence.

Subhead (2) sets out definitions which are relevant to the section.

Head 33 – Code of Practice on arrest

Provide that:

(1) The Commissioner shall, as soon as practicable after the commencement of this section and following consultation with—

- (a) the Policing Authority,
- (b) the Garda Síochána Inspectorate, and
- (c) the Irish Human Rights and Equality Commission,

prepare for submission to the Minister a draft Code of Practice for the purposes of providing practical guidance for the carrying out of the powers under this Part by members of the Garda Síochána.

(2) In particular, the Code of Practice referred to in *subhead (1)* shall set out—

- (a) the matters to be taken into account in determining whether an arrest is necessary,
- (b) the form of information to be given to the person under arrest, under *Head 28*,
- (c) the scope and extent of a search of persons when effecting an arrest,
- (d) the scope and extent of a search of a place for the purpose of effecting an arrest,
- (e) the particular safeguards to apply when the subject of an arrest is a child or a vulnerable person, and
- (f) such other matters related to the search as the Minister deems appropriate.

(3) When preparing a Code of Practice under this Head, the Commissioner shall have regard to the following—

- (a) the obligation on members of the Garda Síochána to act with diligence and determination in the investigation of crime and the protection and vindication of the rights of victims and the protection of the public,
- (b) the fact that an arrest constitutes an interference with a person's right to liberty,
- (c) the fact that a search of a person on arrest constitutes an interference with the person's right to privacy,
- (d) the fact that a search of any dwelling for the purpose of effecting an arrest is an interference in the inviolability of the dwelling;
- (e) any such arrest, search or entry must be necessary and proportionate to the legitimate objectives to be achieved.

(4) A Code of Practice prepared under this section shall be submitted to the Minister for approval.

(5) The Minister may approve, or approve subject to modifications, a Code of Practice submitted to the Minister under *subhead (4)* and, when a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.

(6)(a) A Code of Practice approved under this section may be amended or revoked.

(b) Amendments to such a Code of Practice, other than amendments of a minor or technical nature, shall be submitted to the Minister for approval.

(c) If it is proposed to revoke a Code of Practice approved under this section, the proposed revocation shall be submitted to the Minister for approval.

(7) The Minister may approve, or approve subject to modifications, an amended Code of Practice submitted to the Minister under *subhead (6)(b)* and, when such a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.

(8) The Minister may approve the revocation of a Code of Practice.

(9) A Code of Practice, or an amended Code of Practice, approved by the Minister under this section shall be made publicly available by the Commissioner.

(10) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall not of itself render that person liable to any criminal or civil proceedings or of itself affect the admissibility in evidence thereby obtained.

(11) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall render him or her liable to disciplinary proceedings.

Explanatory note

This Head requires the Commissioner to prepare, for the Minister's approval, a Code of Practice to be followed by members of the Garda Síochána in carrying out their arrest powers, and associated powers of search and entry.

It is based on section 157 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014. Subhead (1) provides for the power. Subhead (2) sets out some of the requirements of that Code of Practice. Subhead (3) aims to provide the principles which govern the making of the codes. Subheads (4) to (9) relate to the approval, modification and revocation of codes of practice, and their publication. Subheads (10) and (11) are based on section 164 of the 2014 Act, and section 7 of the Criminal Justice Act 1984.

Part 6 – Persons in Garda Custody

Head 34 – Interpretation [Part 6]

Provide that:

In this Part—

“custody record” has the meaning assigned to it in *Head 59*;

“custody officer” means a member of the Garda Síochána or a member of the civilian staff of the Garda Síochána appointed in accordance with *Head 35*;

“legal representative” means a practising barrister or practising solicitor under the Legal Services Regulation Act 2015 (No. 65 of 2015);

“parent” has the same meaning it has under the Children Act 2001 (No. 24 of 2001);

“Garda custody facility” means a Garda station or other place of Garda custody designated as such by the Commissioner;

“waiver” means a waiver of the right to consult with a legal representative in accordance with *Head 43*.

Explanatory note

This Head sets out definitions of terms used in this Part.

“Custody officer” is defined as a member of the Garda Síochána or a member of the civilian staff, appointed in accordance with *Head 35*. The role of custody officer will effectively replace the role of member in charge currently provided for in the Criminal Justice Act 1984 and the 1987 Regulations. The Scheme allows for the functions to be carried out by a member of the Garda Síochána or civilian staff.

“Garda custody facility” is used instead of “Garda station” to allow for the fact that other types of custody facilities may be used in future.

Head 35 – Custody officer

Provide that:

(1) In this Part, “custody officer” means the custody officer at a time when the custody officer of a Garda custody facility is required to do anything or cause anything to be done pursuant to this Part.

(2) A superintendent in a division shall issue instructions in writing from time to time, either generally or by reference to particular members or staff, or members of particular ranks, or civilian staff of particular grades, or to particular circumstances, as to who is to be the custody officer of each Garda custody facility in the division.

(3) As far as practicable, the custody officer shall not be a member who was involved in the arrest of a person for the offence in respect of which the person is in custody in the Garda custody facility or in the investigation of that offence.

(4) A written record shall be maintained in each Garda custody facility containing the name and rank or grade of the custody officer at any given time.

Explanatory note

This Head sets out the process by which “custody officers” are appointed. It is based on Regulation 4 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987.

The role of custody officer will effectively replace the role of member in charge currently provided for in the Criminal Justice Act 1984 and the 1987 Regulations. The Scheme allows for the functions to be carried out by a member of the Garda Síochána or civilian staff.

The provisions have also been amended to reflect the new Garda operating model, whereby Garda districts will no longer exist.

Chapter 1 - Persons taken to Garda custody facility after arrest

Head 36 – Arrested person to be taken to Garda custody facility

Provide that:

- (1) A person arrested without warrant under this Bill shall be brought as soon as practicable to a Garda custody facility, unless—
 - (a) the person is already in a Garda custody facility or court,
 - (b) the person requires urgent medical attention, or
 - (c) the person is to be brought directly before a judge of the District Court.
- (2) A person arrested without warrant under this Bill shall be dealt with in accordance with section 15 of the Criminal Justice Act 1951.

Explanatory note

Subhead (1) provides a statutory basis for an arrested person to be brought to a Garda custody facility, with the exceptions provided for.

Subhead (2) refers to section 15 of the Criminal Justice Act 1951. This sets out the obligation to bring an arrested person before a court as soon as reasonably practicable after charge, and other related matters.

Head 37 – Search of person in Garda custody facility following arrest

Provide that:

(1) When a person has been brought to a Garda custody facility under *Head 36*, a member of the Garda Síochána may search the arrested person, in accordance with *Head 30*.

(2) *Subhead (1)* applies whether or not the person was searched, under *Head 30*, prior to his or her arrival at the Garda custody facility.

Explanatory note

This Head provides for the common law power to search an arrested person when they have been brought to a Garda custody facility. Head 30 (search and seizure on arrest) applies immediately on arrest. *DPP v. McFadden* makes it clear that this power also applies where the person has been brought to the station. This Head applies the search power in Head 30 to an arrested person brought to a Garda station or custody facility.

Chapter 2 – Rights of persons in Garda custody

Head 38 – Information to be given to person in Garda custody following arrest

Provide that:

- (1) This Head applies when—
 - (a) a person is in Garda custody having been arrested at a Garda custody facility, or
 - (b) a person is in Garda custody having been taken to a Garda custody facility in accordance with *Head 36*.

- (2) The custody officer of the Garda custody facility shall without delay, inform the person or cause him or her to be informed—
 - (a) of his or her right to consult with a legal representative under *Head 42*, how this entitlement can be availed of, and that his or her legal representative can advise him or her of any entitlement he or she may have to free legal advice or assistance,
 - (b) that he or she is entitled to the assistance of an interpreter if he or she cannot understand the spoken language, and,
 - (c) (i) in the case of a person not below the age of eighteen years, of his or her right to have notification of his or her being in custody in the Garda custody facility concerned sent to a third party under *Head 41*, or
(ii) in the case of a person under the age of eighteen years, that a parent or guardian of the child, or, if he or she is married, his or her spouse, is being given the information required under *Head 28 and this Head* and is being requested to attend at the Garda custody facility without delay.

- (3) The custody officer of the Garda custody facility shall explain or cause to be explained to the arrested person that, if he or she does not wish to exercise a right specified in *subhead (2)(a), (2)(b) or (2)(c)(i)* immediately, he or she will not be precluded thereby from doing so later.

- (4) The custody officer of the Garda custody facility shall without delay give the arrested person or cause him or her to be given a notice containing—
 - (a) the information specified in *subhead (2)*,
 - (b) information on his or her right to access documents or material related to the case,
 - (c) information on the maximum period of time he or she may be detained in the Garda custody facility,
 - (d) information on his or her right to medical attention under *Head 40*,
 - (e) information on his or her right to have a consular authority notified under *Head 41*,
 - (d) information on his or her right to apply for bail and to challenge the lawfulness of his or her arrest and detention before the courts,
 - (e) such other information as the Commissioner, with the approval of the Minister, may from time to time direct, and
 - (f) procedures on how to make a complaint.

- (5) The custody officer of the Garda custody facility shall—
 - (a) ensure that any oral or written communication with an arrested person under this Head is in simple and accessible language, and

- (b) take into account the personal characteristics of the person, including the person's age and any disability, which may affect the ability of the person to understand the custody officer or to be understood.
- (6) Prior to carrying out a search under *Head 37*, the member shall inform the person that he proposes to search him or her and the reason for the search.

Explanatory note

This Head sets out the information which a person in Garda custody must receive. The text is taken from the existing requirements in the Custody Regulations and from additional rights to information under the EU Directive on the Right to Information.

The information is in addition to the information which must be given to a person immediately on arrest, provided separately in Part 5.

Head 39 – Rest periods

Provide that:

- (1) A person in custody in a Garda custody facility shall be allowed such reasonable time for rest as is necessary.
- (2) Subject to *subheads (4) and (6)*, if a person is being detained (for a serious offence pursuant to Head 44) in a Garda custody facility between midnight and 8 a.m.—
 - (a) any questioning of the person for the purpose of the investigation shall be suspended during that period,
 - (b) such period of time shall be excluded in reckoning a period of detention permitted by this *Part*, and
 - (c) the powers conferred by *Head 51* shall not be exercised during the period of suspension.
- (3) The custody officer of the Garda custody facility shall inform, or cause to be informed, the detained person that he or she may object to the suspension of questioning between midnight and 8 a.m.
- (4) Subhead (2) shall not have effect if the detained person objects to the suspension of questioning under that paragraph, unless the detained person has revoked the objection under *subhead (5)*, and such objection shall be recorded in writing or by electronic or other similar means.
- (5) An objection under *subhead (4)* may be revoked and such revocation shall be recorded in writing or by electronic or other similar means.
- (6) A custody officer of the Garda custody facility may authorise the questioning of a person detained pursuant to this section between the hours of midnight and 8 a.m. where he or she has reasonable grounds for believing that to suspend the questioning would involve a risk of—
 - (a) interference with, or injury to other persons, including death,
 - (b) serious loss of, or damage to, property,
 - (c) the destruction of, or interference with, evidence,
 - (d) accomplices being alerted or the securing of their apprehension being made more difficult, or
 - (e) hindering the recovery of property obtained as a result of an offence or the recovery of the value of any proceeds of an offence.
- (7) If at any time during which an authorisation under *subhead (6)* is in effect, the custody officer believes there are no longer reasonable grounds for the authorisation, it shall be withdrawn.
- (8) Where an authorisation is given under *subhead (6)* it shall have effect from the time of the giving of a notice in the prescribed form under *subhead (9)* until 8 a.m. or until the time of the giving of a subsequent notice in the prescribed form under *subhead (10)*, as the case may be, and—
 - (a) the period during which the authorisation has effect shall be included in reckoning a period of detention permitted by this *Part*, and

(b) the powers conferred by *Head 51* shall be exercisable in respect of the person concerned.

(9) Where an authorisation is given under *subhead (6)*, the custody officer of the Garda custody facility shall give a notice in writing in the prescribed form to the detained person which shall—

(a) state that an authorisation has been given,

(b) specify the time at which the authorisation was given together with the time at which the notice was given,

and that custody officer shall explain to the person orally the effect of the notice so given.

(10) Where an authorisation is withdrawn under *subhead (7)*, the custody officer of the Garda custody facility shall give a notice in writing in the prescribed form to the detained person which shall—

(a) state that the authorisation has been withdrawn, and

(b) specify the time at which the authorisation was withdrawn together with the time at which the notice was given,

and that custody officer shall explain to the person orally the effect of the notice so given.

(11) Nothing in *subhead (2)* shall operate to prevent the powers conferred by *Head 51* being exercised in respect of a person who is arrested and detained between the hours of midnight and 8 a.m.

Explanatory note

This Head is taken from the provisions in section 7(c) of the Criminal Justice Act 2011 which substituted a new section 4(6) into the Act of 1984 replacing the existing provisions on the suspension of detention between the hours of 12:00 and 8:00am with revised arrangements. Section 7(c) has not yet been commenced. This is the text of the revised subsection 4(6) provided for in the 2011 Act. Subhead (1) is taken from Regulation 19(2) of the Treatment of Persons in Custody Regulations 1987.

The Head provides that suspension of detention between the hours of 12:00 and 8:00am will be the default position. Subhead (3) provides that the person may object to the suspension but any such objection may be withdrawn. Subhead (6) provides that a designated person or member in charge may authorise questioning of the person during the night time hours in certain circumstances.

The Head also provides for the information to be given to the detained person in relation to a suspension, objection to a suspension or authorisation to question during night time hours.

Head 40 – Access to medical attention

Provide that:

(1) Where a person has been arrested on suspicion of having committed an offence, at the time of his or her arrest, or at any time during the person's detention in a Garda custody facility, it appears to a member of the Garda Síochána that the person is in need of medical attention or assessment, the member shall—

- (a) request that a medical practitioner assess the condition of the person, or
- (b) take the person, or cause the person to be taken, to a hospital or other suitable place to receive such attention.

(2)(a) Where a medical practitioner—

- (i) has, at the request of a member of the Garda Síochána under *subhead (1)*, assessed the condition a person, and
- (ii) certifies that the person, although the person's condition is not such as to require the person's hospitalisation, is unfit for any questioning for the purpose of the investigation for a specified period, no questioning of the person shall take place during that period.

(b) The period that may be specified in a certificate provided under *paragraph (a)* by a medical practitioner shall not exceed 6 hours.

(c) A certificate may be provided under *paragraph (a)* on one occasion only in respect of the particular person detained pursuant to *Head 44*.

(3) (a) Any period of time where medical attention or assessment has been sought under *subhead (1)* and questioning cannot take place owing to that fact shall be excluded in reckoning a period of detention permitted by this Part.

(b) Where a person has been taken to a hospital or other suitable place to receive medical attention in accordance with *subhead (1)(b)*, the time before his or her arrival at the Garda custody facility or the time during which he or she is absent from the facility, as the case may be, shall be excluded in reckoning a period of detention permitted by this Part.

(c) Where a person has been certified unfit for questioning for a specified period, in accordance with *subhead (2)(a)(ii)*, that period shall be excluded in reckoning a period of detention permitted by this Part.

Explanatory Note

This Head is based on the wording of section 4(8) of the Criminal Justice Act 1984. It is reworded to add an explicit requirement that medical attention is sought for a person who is in Garda custody and appears to be in need of such attention, either by arranging for a medical practitioner to assess the person or taking the person to hospital or other medical facility.

Subhead (2) provides for the medical practitioner to certify the person unfit for questioning for a specified period of up to 6 hours. Only one additional 6 hour period may be certified.

Subhead (3) provides that any period where the person is absent from the station in receipt of medical attention or any time where he or she is certified unfit for questioning are excluded from the detention period.

Head 41 – Notification to third persons and consular authorities

Provide that:

(1) Where a person has been arrested and brought to a Garda custody facility, on suspicion of having committed an offence, the custody officer shall, on request, notify as soon as practicable—

- (a) a third party reasonably named by the person; and
- (b) where the person is a national of a country other than the State, his or her consul, of his or her arrest and the place in which he or she is detained.

(2) Where a member of the Garda Síochána has reasonable grounds to believe that the notification of a particular third party under *subhead (1)(a)*, would prejudice any investigation or criminal proceedings regarding the offence, the member is not obliged to notify that person, and a record that the person was not notified and the reason for it shall be made in the custody record.

(3) Consular officers shall be entitled to visit one of their nationals, or a national of another State for whom, by formal or informal arrangement, they offer consular assistance, who is an arrested person and to converse and correspond with him or her and to arrange for his or her legal representation.

Explanatory note

The right to have a third party notified is provided for in section 5 of the Act of 1984 together with the right to have a legal representative notified. This has been separated out here and the right of a foreign national to have his or her consul notified, currently provided for in Regulation 14 of the Custody Regulations has also been included here.

The right of access to a legal representative is provided for in Head 42.

Head 42 – Access to legal representation

Provide that:

- (1) A person in custody in a Garda custody facility shall be entitled to consult with a legal representative and the custody officer shall, on request, cause a legal representative to be notified accordingly as soon as practicable.
- (2) Subject to *Head 43*, where a person is detained at a Garda custody facility, under *Head 44*, no questioning of the person shall take place nor shall he or she be asked to make a written statement until such time as he or she has had an opportunity to consult with a legal representative and, the period of time commencing from the time the person makes a request to consult with a legal representative and ending upon the conclusion of such a consultation, shall be excluded in reckoning a period of detention permitted under *Head 50*.
- (3) Where a person is detained at a Garda custody facility, under *Head 44*, and during the course of questioning the person, the person makes a request to consult with a legal representative, no further questioning of the person shall take place nor shall he or she be asked to make a written statement until such time as he or she has had an opportunity to consult with a legal representative and, the period of time commencing from the time the person makes a request to consult with a legal representative and ending upon the conclusion of such a consultation, shall be excluded in reckoning a period of detention permitted under *Head 49*.
- (4) If a legal representative cannot be contacted within a reasonable timeframe or he or she is unable or unwilling to consult with the person referred to in *subhead (1)*, the person shall be given an opportunity to ask for another legal representative and, if the person asks for another legal representative, the custody officer shall notify or cause to be notified that other legal representative as soon as practicable.
- (5) Where a person is detained in a Garda custody facility under *Head 44*, a legal representative may accompany the person at any interview conducted.
- (6) Where a member of the Garda Síochána not below the rank of inspector reasonably believes that the presence of a legal representative referred to in *subhead (5)*, would prejudice any investigation or criminal proceedings regarding the offence, or, owing to the behaviour of the person, would be unduly disruptive, the member may require that the person concerned absent himself or herself from the interview.
- (7) Where a member of the Garda Síochána not below the rank of inspector decides to exclude a legal representative from accompanying a person at an interview under *subhead (6)*, the member shall inform the person that *subhead (5)* continues to apply and he or she may be accompanied by another legal representative and the member shall make such arrangements as are necessary for the person to be so accompanied.
- (8)(a) Subject to *paragraph (b)*, consultation with a legal representative, referred to in *subhead (1)*, shall take place in private.
(b) Any consultation with a legal representative may take place in the sight but out of hearing of a member of the Garda Síochána or the custody officer.

(9) Where a person other than a person referred to in *subhead (1)* is in custody in a Garda custody facility, *subheads (1) and (4)* shall apply to that person with any necessary modifications.

(10) The right to consult referred to in *subhead (1)* means a right to consult in person, or, where the person in custody consents, by telephone.

Explanatory note

Subhead (1) provides that where a person is arrested and brought to a Garda custody facility of suspicion of having committed an offence, he or she has the right to consult with a legal representative. It also requires that a legal representative be notified.

Subhead (2) provides that a person who has been detained under Head 48 must be provided with access to a legal representative prior to questioning. It also provides that the time of waiting for the legal representative to arrive and the time taken for the consultation are not included in calculating the detention period.

Subhead (3) deals with a situation where a person requests to consult a legal representative during the course of an interview. In that case, the questioning must cease and the time of waiting for the legal representative to arrive and the time taken for the consultation are not included in calculating the detention period.

Subhead (4) provides that a person must be given an opportunity to request an alternative legal representative if the first one does not arrive within a reasonable period of time.

Subhead (5) provides for the right of a legal representative to attend at interview. The procedure to apply will be provided for in a Code of Practice under Head 64.

Subheads (6) and (7) provide that a legal representative may be prevented from attending at interview with an accused person, on the authorisation of an Inspector, where his or her presence would be unduly disruptive or prejudice an investigation. Another legal representative may attend the interview instead.

Subhead (8) provides that consultations with legal representatives shall take place in private but that a Garda member may be able to see the person during the consultation.

Subhead (9) applies right to consult with a legal representative to persons in custody who have not been arrested but are there for some other reason (for example, they have been taken there to be searched pursuant to a stop and search under Head 9). This reflects the current position under the Criminal Justice Act 1984 (Treatment of Persons in Custody) Regulations 1987.

Subhead (10) provides that a person can consult with a legal representative in person or by telephone, if the person consents to telephone consultation.

Head 43 – Questioning of an accused person prior to legal advice

Provide that:

- (1) Subject to *subhead (2)*, a person other than a person under the age of eighteen may waive his or her right to consult with a legal representative under *Head 42*, provided that he or she:
 - (a) has been informed of the right in a manner and language that he or she understands;
 - and
 - (b) expresses clearly that he or she wishes to waive that right.
- (2) A person who refuses to consult with a legal representative who has made himself or herself available for the purpose of consulting with the person shall, in so refusing to consult with the legal representative, be deemed to have waived his or her right to consult a legal representative.
- (3) Where a person waives or is deemed under *subhead (2)* to have waived his or her right to consult with a legal representative, the questioning of that person may commence.
- (4) A member of the Garda Síochána not below the rank of inspector may authorise the questioning of a person who has not yet consulted with a legal representative where the member concerned has reasonable grounds for believing that to delay the questioning would involve a risk of—
 - (a) interference with, or injury to, other persons,
 - (b) serious loss of, or damage to, property,
 - (c) the destruction of, or interference with, evidence,
 - (d) accomplices being alerted or the securing of their apprehension being made more difficult, or
 - (e) hindering the recovery of property obtained as a result of an offence or the recovery of the value of any proceeds of an offence.
- (5) Where an authorisation is given under *subhead (4)*, the member of the Garda Síochána not below the rank of inspector shall give a notice in writing in the prescribed form to the detained person which shall—
 - (a) state that an authorisation has been given,
 - (b) specify the time at which the authorisation was given together with the time at which the notice was given,and that member shall explain to the person orally the effect of the notice so given.
- (6) An authorisation under *subhead (4)* shall be recorded in the custody record.

Explanatory note

Subhead (1) provides that a person over 18, who has been advised of his or her right to consult with a legal representative, is entitled to waive that right if he or she has been clearly informed of the right and has explicitly stated his or her desire to waive it.

Subhead (2) provides that a refusal to consult with a legal representative who is available for consultation may be deemed a waiver of the right.

Subhead (3) provides that questioning of a person who has waived the right to consult a legal representative or is deemed to have waived that right, may begin.

Subhead (4) provides that questioning of a detained person may begin before he or she has consulted with a legal representative in certain specified circumstances where there is an immediate risk if the questioning does not commence.

The text of this Head is largely drawn from section 5A of the Act of 1984, inserted by the Criminal Justice Act 2011, which aimed to provide for the right to consult with a legal representative prior to questioning. Section 5A has not been commenced as it requires amendment to the Custody Regulations and is also awaiting primary legislation to provide for the right of access to a lawyer during interview.

Chapter 3 – Powers of detention

Head 44 – Detention after arrest for investigation of serious offence

Provide that:

- (1) Where a member of the Garda Síochána arrests a person under *Head 23(1)* for a serious offence or offences, the person may be detained in a Garda custody facility for such period as is authorised by this *Part*, if the custody officer of the facility in which the person was arrested or to which he or she was brought following arrest, has at the time of the person's arrest or arrival at the facility following arrest, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence or offences.
- (2) Where a member of the Garda Síochána arrests a person pursuant to an authority of a judge of the District Court under *Head 31*, the person may be taken to and detained in a Garda custody facility for such period as is authorised by this *Part* if the custody officer of the facility to which the person is taken on arrest has at the time of the persons arrival at the facility reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.
- (3) (a) Subject to *paragraph (b)*, this Head shall not apply to a person below the age of twelve years.
(b) If the custody officer of the Garda custody facility in which a person is detained has reasonable grounds for believing that the person is not below the age of twelve years the subsection shall apply to him as if he were of that age, provided that, where such member ascertains or has reasonable grounds for believing that the person is below that age, he shall be released from custody forthwith unless his detention is authorised apart from this Bill.

Explanatory note

This Head provides the power to detain a person where the detention is necessary for the proper investigation of the offence.

The wording used is amended from the wording of the 1984 Act to align with provisions in the arrest part. The same wording as used in the 1984 Act is used in the section 50 of the Criminal Justice Act 2007 and very similar wording is used in the Criminal Justice (Drug Trafficking) Act 1996. This should effectively combine and replace those three provisions which will be repealed. The amendments remove the reasons for arrest as these are now covered by a cross reference to Head 23. The power to take a person to a Garda custody facility is also removed as this is now provided for in Head 36.

Subhead (2) provides for the same detention power in the case of a person re-arrested under warrant by a district court judge (in respect of an offence for which he or she has been previously detained and released without charge and where additional evidence has come to the attention of the Gardaí). This is currently provided for in both the 1984 and 2007 Act.

Subhead (4) dis-applies the power to detain a person on arrest to children under the age of 12. The wording for this subhead has been taken from section 4(7) of the 1984 Act.

Head 45 – Maximum period of detention

Provide that:

(1) Subject to the provisions of this *Part*, the period for which an arrested person may be detained under this *Part* shall not exceed six hours from the time of arrest.

(2) (a) A member of the Garda Síochána not below the rank of inspector may direct that a person detained pursuant to *subhead (1)* be detained for a further period, or periods, not exceeding six hours each from the time of expiry of the previous period, if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence.

(b) The period for which an arrested person may be detained, pursuant to a direction or directions under paragraph (a) shall not exceed 24 hours from the time of arrest.

(3) A member of the Garda Síochána not below the rank of chief superintendent may direct that a person detained pursuant to a direction under *subhead (2)*—

(a) in respect of an offence under *Schedule 5*, or

(b) where the person has been arrested on suspicion of having committed two or more serious offences which do not arise out of the same set of facts,

be detained for a further period not exceeding 24 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

Explanatory note

This Head provides for the maximum periods of detention available for a person detained under Head 44. Subhead (1) provides that the initial period of detention, for any serious (currently defined as ‘arrestable’) offence, is 6 hours.

Subhead (2) provides for an extension, or extensions, of the period of detention in blocks of up to 6 hours each, authorised by an inspector, if the inspector believes it is necessary for the proper investigation of the offence. The wording differs from the current wording to ensure that if a period of less than 6 is authorised, additional extensions may still be authorised to bring the total to 24 hours. This is available in the case of all serious offences and will bring the maximum period which a person may be detained up to 24 hours.

At present a superintendent can extend the detention period for any arrestable offence for an additional 6 hours and a chief superintendent can extend it for 12 further hours (total 24 hours). Under the new Head all extensions up to 24 hours can be authorised at the rank of inspector or above.

Subhead (3) provides for an additional period of extended detention of a further 24 hours, which may be authorised by a chief superintendent if the chief superintendent believes it is necessary for the proper investigation of the offence. This applies only in the case of schedule 5 offences (more serious offences – there are currently no offences for which there is a 48 hour maximum). The text also allows for an extension for this period where multiple offences which occurred as separate incidents are being investigated. The wording ‘the same set of facts’ is taken from section 6 of the Criminal Justice Act 1951.

Head 46 – Record of direction extending detention

Provide that:

(1) A direction pursuant to *Head 45* may be given orally or in writing and, if given orally, shall be recorded in writing as soon as practicable.

(2) The direction or, if it was given orally, the written record of it shall be signed by the officer giving it and—

(a) shall state the date and time when it was given, the length of detention, the officer's name and rank and that the officer had reasonable grounds for believing that such further detention was necessary for the proper investigation of the offence concerned, and

(b) shall be noted in the custody record under *Head 59*.

Explanatory note

Subhead (1) is taken from section 4(3)(c) of the Criminal Justice Act 1984. Subhead (2) is modelled on section 2(2)(d) to (f) of the Criminal Justice (Drug Trafficking) Act 1996 with the addition of 'the length of detention'.

Head 47 – Extended period of detention for Schedule 5 offences

Provide that:

(1) A member of the Garda Síochána not below the rank of superintendent may apply to a judge of the Circuit Court or a judge of the District Court for a warrant authorising the detention of a person detained pursuant to a direction under *Head 45(3)(a)*, in respect of an offence under *Schedule 5*, for a further period not exceeding 72 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

(2) On an application under *subhead (1)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 72 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.

(3) A member of the Garda Síochána not below the rank of superintendent may apply to a judge of the Circuit Court or a judge of the District Court for a warrant authorising the detention of a person detained under a warrant issued pursuant to *subhead (2)*, for a further period not exceeding 48 hours, if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

(4) On an application under *subhead (3)* the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 48 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.

Explanatory note

Head 47 provides for the Court extended detention periods. It is modelled on provisions of extended detention in the Criminal Justice (Drug Trafficking) Act 1996 and section 50 of the Criminal Justice Act 2007. The rank of Garda officer authorised to apply to the Court for an extension of detention under this Head has been set at superintendent, rather than chief superintendent under the existing powers. Given that the Court is the effective safeguard for the detained person's rights under this Head, this change would appear to be appropriate given the operational issues arising under the new Garda operating model.

Head 48 – Judicial powers on hearing applications for detention extension

Provide that:

(1) On an application under *Head 47(1)* or (3) the person to whom the application relates shall be produced before the judge concerned and the judge shall hear any submissions made and consider any evidence adduced by or on behalf of the person and the officer of the Garda Síochána making the application.

(2) (a) Without prejudice to *paragraph (b)*, where a judge hearing an application under *Head 47* is satisfied, in order to avoid a risk of prejudice to the investigation concerned, that it is desirable to do so, he may—

- (i) direct that the application be heard otherwise than in public, or
- (ii) exclude from the Court during the hearing all persons except officers of the Court, persons directly concerned in the proceedings, bona fide representatives of the Press and such other persons as the Court may permit to remain.

(b) On the hearing of an application under *Head 47* the judge may, of his or her own motion or on application by the member of the Garda Síochána making the application under *Head 47*, where it appears that—

- (i) particular evidence to be given by any member of the Garda Síochána during the hearing (including evidence by way of answer to a question asked of the member in cross-examination) concerns steps that have been, or may be, taken in the course of any inquiry or investigation being conducted by the Garda Síochána with respect to the suspected involvement of the person to whom the application relates, or any other person, in the commission of the offence to which the detention relates or another offence, and
- (ii) the nature of those steps is such that the giving of that evidence concerning them could prejudice, in a material respect, the proper conducting of any foregoing inquiry or investigation,

direct that, in the public interest, the particular evidence shall be given in the absence of every person, including the person to whom the application relates and any legal representative (whether of that person or the applicant), other than—

- (I) the member or members whose attendance is necessary for the purpose of giving the evidence to the judge; and
- (II) if the judge deems it appropriate, such one or more of the clerks or registrars of the Court as the judge determines.

(c) If, having heard such evidence given in that manner, the judge considers the disclosure of the matters to which that evidence relates would not have the effect referred to in *paragraph (b)(ii)*, the judge shall direct the evidence to be re-given in the presence of all the other persons or, as the case may be, those of them not otherwise excluded from the Court under *paragraph (a)*.

(d) If any matter is published or broadcast in contravention of *paragraph (a)*, the following persons, namely—

- (i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
 - (ii) in the case of any other publication, the person who publishes it, and
 - (iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,
- shall be guilty of an offence.

(e) A person guilty of an offence under *paragraph (d)* shall be liable—

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

(f) Where an offence under this subhead is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(g) Where the affairs of a body corporate are managed by its members, *paragraph (f)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(3) Save where any rule of law requires such an issue to be determined by the Court, in an application under *Head 47* no issue as to the lawfulness of the arrest or detention of the person to whom the application relates may be raised.

(4) (a) In an application under *Head 47* it shall not be necessary for a member of the Garda Síochána, other than the member making the application, to give oral evidence for the purposes of the application and the latter member may testify in relation to any matter within the knowledge of another member of the Garda Síochána that is relevant to the application notwithstanding that it is not within the personal knowledge of the member.

(b) However, the Court hearing such an application may, if it considers it to be in the interests of justice to do so, direct that another member of the Garda Síochána give oral evidence and the Court may adjourn the hearing of the application for the purpose of receiving such evidence.

(5) In this Head—

“broadcast” means the transmission, relaying or distribution by wireless telegraphy, cable or the internet of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, sign, visual images or signals are actually received or not;

“publish” means publish, other than by way of broadcast, to the public or a portion of the public.

Explanatory note

The above provisions are largely taken from the Criminal Justice (Drug Trafficking) Act 1996. Subhead (1) provides that where an application for an extended period of detention is made, the detained person shall be brought before the court and may make submissions.

Subheads (2) to (4) were inserted by section 23 of the Criminal Justice (Amendment) Act 2009 for the purposes of ensuring that court applications to extend detention do not operate in a manner that prejudices the investigation of crime by, for example, the disclosure of sensitive information. There was an additional aim to avoid the unnecessary diversion of Garda personnel away from ongoing investigations. Similar provisions were inserted into section 30 of the Offences Against the State Act 1939 and section 50 of the Criminal Justice Act 2007 also by the 2009 Act (that is all enactments that permit detention beyond 48 hours).

Subhead (2) provides that applications for an extended period of detention may be made in private, or particular evidence be given in private and prohibits the publication of any information other than the fact that the hearing has taken place. Paragraph (e) provides that publication of information in breach of these provisions is an offence punishable on summary conviction of up to 12 months imprisonment, or on indictment of up to 3 years imprisonment.

Subhead (3) provides that the question of the lawfulness of the initial arrest cannot be dealt with in such hearings and subhead (4) provides that the member of the Gardaí making the application does not need to testify in the hearing and any other member can give evidence on his or her behalf.

The definitions in subhead (5) are taken from section 3A of the Criminal Justice (Drug Trafficking) Act 1996, as inserted by the Criminal Justice (Amendment) Act 2009.

Head 49 – Reckoning the period of detention

Provide that:

(1) Where a person detained pursuant to *Head 44* is taken to a court in connection with an application relating to the lawfulness of his or her detention, the time during which he is absent from the place of detention for that purpose shall be excluded in reckoning a period of detention permitted by this *Part*.

(2) To avoid doubt, it is hereby declared that a person who is being detained pursuant to *Head 44* in connection with an offence shall in no case be held in detention (whether for the investigation of that or any other offence) for longer than-

(a) in the case of a serious offence that is not a *Schedule 5* offence, twenty-four hours or forty-eight hours if *Head 45(3)(b)* applies; or

(b) in the case of a *Schedule 5* offence, 168 hours,

from the time of his arrest, not including any period which is to be excluded under *Head 39*, *Head 40*, *Head 42* or *Head 53* and *Head 54* in reckoning a period of detention.

Explanatory note

This Head provides in subhead (1) that any period in which a person is taken to court to contest the lawfulness of his or her arrest shall not be counted in calculating the period of detention permitted.

Subhead (2) provides, for clarity, a list of all of other time periods which are not included in calculating the maximum period of detention permitted.

The Head follows the wording of subsection 4(9) of the Criminal Justice Act 1984, amended to provide for extended periods of detention for Schedule 5 offences.

Head 50 – Release from detention

Provide that:

- (1) If at any time during the detention of a person pursuant to this *Part* there are no longer reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence to which the detention relates, the person shall, subject to *subhead (3)*, be released from custody forthwith unless he or she is charged or caused to be charged with an offence and is brought before a court as soon as may be in connection with such charge or his or her detention is authorised apart from this Bill.
- (2) If at any time during the detention of a person pursuant to this *Part* there are no longer reasonable grounds for suspecting that he or she has committed a serious offence, he or she shall be released from custody forthwith unless his or her detention is authorised apart from this Bill.
- (3) If at any time during the detention of a person pursuant to this *Part* a member of the Garda Síochána, with reasonable grounds, suspects that person of having committed a serious offence, other than an offence to which the detention relates or an offence in respect of which the person's detention has been suspended under *Head 53*, and the custody officer of the facility has reasonable grounds for believing that the continued detention of that person is necessary for the proper investigation of that other offence, the person may continue to be detained in relation to the other offence as if that offence was the offence for which the person was originally detained.

Explanatory note

This Head provides for the release of the person before the expiry of the permitted period of detention, where there is no longer a reason to detain the person. Subhead (1) provides that a person must be released from custody if there is no longer reasonable grounds to believe the detention is necessary for the proper investigation of the offence, unless the person is being charged immediately.

Subhead (2) provides for the person's immediate release if there are no longer grounds to suspect that he or she committed the offence in question.

Subhead (3) provides for an exception to the immediate release under subheads (1) or (2) if another serious offence is suspected during the detention period and the person can continue to be detained on the basis of that offence instead. This does not extend the overall period of detention.

This Head is modelled on sections 4(4), (5) and (5A) of the Criminal Justice Act 1984 and replaces those subsections.

Chapter 4 – Powers in relation to detained persons

Head 51 – Power to take photograph, fingerprint and palm print

Provide that:

(1) Where a person is detained pursuant to *Head 44*, a member of the Garda Síochána may—

- (a) photograph him or her or cause him or her to be photographed;
- (b) take, or cause to be taken, his or her fingerprints and palm prints.

(2) Where photographs or fingerprints and palm prints, taken pursuant to *subhead (1)*, are lost or damaged or are otherwise imperfect, they may be taken on a second or further occasion.

(3) The powers conferred by *subheads (1)* or *(2)* shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of inspector.

Explanatory note

Subhead (1) provides a power for a Garda to take the photograph, fingerprint and palm print.

Subhead (2) provides that if a photo, fingerprint or palm print taken under subhead (1) is lost or damaged, it may be taken again.

Subhead (3) provides that the powers under subheads (1) and (2) may only be exercised on the authority of an inspector.

These powers are contained in section 6 of the Act of 1984. The other powers under section 6 have been omitted as they are addressed elsewhere in the Bill. The power under 6(1)(a) – name and address – is provided for under Head 71. The powers to search a detained person under 6(1)(b) and (f) and 6(3) are provided under Head 37.

Head 52 – Use of reasonable force to take photograph, fingerprint and palm print

Provide that:

- (1) Without prejudice to the generality of *Head 51*, a member of the Garda Síochána and the member or members of the Garda Síochána assisting that member may, where—
- (a) a person is detained under *Head 44*, and
 - (b) he or she fails or refuses to allow his or her photograph or fingerprints and palm prints to be taken pursuant to *Head 51*, use such force as is reasonably considered necessary—
 - (i) to take the photograph or fingerprints and palm prints, or
 - (ii) to prevent them from being lost, damaged or otherwise being made imperfect, or both.
- (2) (a) The power conferred by *subhead (1)* shall not be exercised except on the authority, and in the presence of, a member of the Garda Síochána not below the rank of inspector and that member shall determine the number of members of the Garda Síochána that is reasonably necessary for the purposes of *subhead (1)*.
- (b) An authorisation pursuant to *paragraph (a)* may be given orally or in writing and if given orally shall be confirmed in writing as soon as practicable.
- (3) Where it is intended to exercise the power conferred by *subhead (1)*, one of the members of the Garda Síochána concerned shall inform the person—
- (a) of that intention, and
 - (b) that an authorisation to do so has been given pursuant to *subhead (2)(a)*.
- (4) The taking of such photographs and fingerprints and palm prints shall be recorded by electronic or similar means.

Explanatory note

Head 52 provides a power to use reasonable force to take a photo, fingerprint or palm print where the detained person refuses or obstructs the taking of that photo or print. The Head includes the same powers provided for in section 6A of the Act of 1984. The only change is that the rank of officer who may authorise the use of force has been reduced to Inspector and as this is the same rank as that of the officer who must be present, subsections (2) and (4) of section 6 of the 1984 Act have been combined into subhead (2) here. Sections 6 and 6A of the 1984 Act can be repealed – note that there will be consequential amendments needed as these sections are referenced in other enactments.

Chapter 5 – Suspension of detention

Head 53 – Suspension of detention

Provide that:

- (1) (a) Notwithstanding the generality of *Heads 44* and *45*, if a person is detained pursuant to this *Part* in respect of a relevant offence, the custody officer of the Garda custody facility where the person is being detained may, at any time during the detention, where the officer has reasonable grounds for believing that it is necessary for the purpose of permitting enquiries or investigations to be made for the further and proper investigation of the offence concerned, suspend the detention of the person.

(b) Where the custody officer of the Garda custody facility suspends a person's detention under this subhead, the person shall, subject to *subhead 50(3)*, be released from custody forthwith unless his or her detention is authorised apart from this Bill.

(c) A person's detention pursuant to this Head in respect of a relevant offence may be suspended under *paragraph (a)* on no more than 2 occasions.
- (2) The total period of time for which a person's detention may be suspended shall not in any case exceed a period of 4 months from the date on which the detention was first suspended.
- (3) Subject to *subhead (4)*, a person whose detention is suspended under *subhead (1)* shall return to such Garda custody facility at such date and time as is specified by notice in writing given to him or her under *subhead (5)* or at such other date and time or Garda custody facility as may be notified to him or her in writing under *subhead (6)*.
- (4) Where, in the case of a person whose detention is suspended under *subhead (1)*—
 - (a) his or her detention is continued in respect of another offence, and
 - (b) the total period of detention permissible under *Head 45* is reached during that continuation of detention,the custody officer of the Garda custody facility concerned shall give the person notice in writing or cause him or her to be given notice in writing of that fact, and the notice under *subhead (5)* or *subhead (6)*, as the case may be, shall be deemed to be withdrawn accordingly.
- (5) (a) Where a person's detention is suspended under *subhead (1)*, the custody officer of the Garda custody facility concerned shall give the person notice in writing or cause him or her to be given notice in writing—
 - (i) that his or her detention is being suspended,
 - (ii) of the Garda custody facility and of the date and time on which he or she is required to return to such facility for the continuation of the detention concerned, and

(iii) of the consequences under *Heads 54 and 55* of failing to return in accordance with *subhead (3)*.

(b) A custody officer when giving the notice to any person under *paragraph (a)* shall explain to him or her orally the effect of the notice.

(6) (a) Subject to *subhead (2)*, a member of the Garda Síochána not below the rank of inspector may, in respect of a person whose detention has been suspended under *subhead (1)*, issue a notice in writing to the person appointing a new date and time or a different Garda custody facility for the person's return for the continuation of the detention concerned where that member has reasonable grounds for believing that it is necessary for the proper investigation of the offence concerned to so change the return date and time or the Garda custody facility, as the case may be.

(b) The person in respect of whom the notice under *paragraph (a)* is issued shall be given such notice of the new date and time or Garda custody facility appointed under that paragraph as shall be prescribed.

(c) Only one notice under *paragraph (a)* may be issued to a person during each period of suspension, but nothing in this paragraph shall prejudice the exercise of the power to issue such notice in the circumstances referred to in *paragraph (d)*.

(d) A member of the Garda Síochána not below the rank of inspector may—

- (i) if a person whose detention is suspended under *subhead (1)* so requests, and
- (ii) the member is satisfied that there is good and sufficient reason for doing so, issue a notice under *paragraph (a)*.

(7) (a) Where a person returns in accordance with *subhead (3)* or is returned under *Head 54* to the Garda custody facility—

- (i) his or her detention shall be continued in accordance with this Part for such period as is authorised by this Part, and
- (ii) the period of time commencing on his or her return to the Garda custody facility for the continuation of the detention concerned shall be included in reckoning a period of detention permitted by this Part.

(b) Where, however, the custody officer of the Garda custody facility concerned no longer has, at the time of the person's return, reasonable grounds for believing that the person's continued detention is necessary for the proper investigation of the offence, the person shall, subject to *Head 50*, be released from custody forthwith unless his or her detention is otherwise authorised by law.

(8) For the avoidance of doubt it is hereby declared that—

(a) where a person's detention is suspended under *subsection (1)*, the detention shall remain suspended until such time as it is continued under *subhead 50(3)* and, accordingly, the period of time during which the detention remains suspended shall be excluded in reckoning a period of detention permitted by this Part,

- (b) where a person whose detention is suspended under *subsection (1)* in respect of an offence, is subsequently arrested and detained (‘subsequent arrest and detention’) in respect of another offence, the subsequent arrest and detention shall not operate to affect the detention which was suspended and it shall remain suspended until such time as it is continued under *subhead (5)*,
 - (c) subject to *Head 49(2)*, where a person’s detention is suspended under *subhead (1)* in respect of an offence but his or her detention is continued under *Head 50(3)* in respect of another offence, the continuation of the detention under *Head 50(3)* shall not operate to affect the detention which was suspended in respect of the first mentioned offence and the detention shall in so far as it relates to the first mentioned offence remain suspended until such time as it is continued under *Head 50(3)*.
- (9) If at any time during the detention of a person pursuant to this section there are no longer reasonable grounds for suspecting that he has committed an offence to which this section applies, he shall be released from custody forthwith unless his detention is authorised apart from this Bill.
- (10) The Minister shall make regulations in relation to the procedures that are to apply where a person’s detention is suspended under this Head and, without prejudice to the generality of the foregoing, such regulations may make provision for —
- (a) the form of notices for the purposes of *subheads (4), (5) and (6)*, and
 - (b) the notice period for the purpose of *subhead (6)(b)*.
- (11) In this Head, “relevant offence” has the meaning it has in the Criminal Justice Act 2011.

Explanatory note

This Head provides for the suspension of detention for “relevant offences” currently in subsections 3A to 3F of section 4 of the Act of 1984, and the regulation-making power in section 4C of that Act. The text remains the same as in those sections with cross-references amended to reflect these Heads.

Head 54 – Power to arrest and return person for purpose of continuation of detention

Provide that:

(1) Notwithstanding *Head 31*, where a member of the Garda Síochána reasonably suspects that a person has failed to return in accordance with *Head 53* to a Garda custody facility for the continuation of his or her detention, the member may, for the purpose of the continuation of the detention—

- (a) arrest the person without warrant, and
- (b) return him or her to the Garda custody facility specified for the continuation of the detention concerned.

(2) A person who is arrested under this Head shall, as soon as practicable, be returned to the Garda custody facility which is specified for the continuation of his or her detention.

(3) Where a person is returned to a Garda custody facility under *subhead (2)*, the period of time commencing on his or her arrest and ending on his or her arrival to the Garda custody facility concerned shall be excluded in reckoning a period of detention permitted under *Head 49*.

Explanatory note

This Head provides for a power of arrest for a failure to return after a suspension of detention under Head 53 currently in section 4A of the Act of 1984. The text remains the same as in those sections with cross-references amended to reflect these Heads.

Head 55 – Offence of failing to return to Garda custody facility

Provide that:

- (1) If a person whose detention has been suspended under *Head 53* fails, without reasonable excuse, to return to the Garda custody facility concerned in accordance with *Head 53*, he or she shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both.
- (2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 2 years from the date on which the offence was committed.
- (3) The provisions of this Head are in addition to, and not in substitution for, the provisions of *Head 54*.

Explanatory note

This Head provides for a power of arrest for a failure to return after a suspension of detention under Head 53 currently in section 4B of the Act of 1984. The text remains the same as in those sections with cross-references amended to reflect these Heads.

Chapter 6 – Detention following re-arrest

Head 56 – Detention following re-arrest under Head 31

(1) Where a person has been re-arrested under a warrant issued pursuant to *Head 31*, the person may be taken to a Garda custody facility and detained in accordance with this *Part*, subject to this Head.

(2) Where a person is detained under this *Part*—

- (a) after having been re-arrested under a warrant issued pursuant to *Head 31*, and
- (b) the offence for which the person had previously been detained was an offence under *Schedule 5*, and

(c) the offence for which the person was re-arrested was an offence under *Schedule 5*, the authorisation of a further period of detention not exceeding 24 hours under *Head 45(3)* may be made by a judge of the Circuit Court or District Court on application by a member of the Garda Síochána not below the rank of superintendent if the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously.

(2) Where a person who has been arrested under section 30 of the Offences Against the State Act 1939 in connection with an offence is released without any charge having been made against him, he or she shall not be detained pursuant to this *Part*—

- (a) in connection with the first-mentioned offence, or
- (b) in connection with a serious offence and which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested, suspected, or ought reasonably to have suspected, him or her of having committed.

Explanatory note

This Head concerns the detention of a person where they have been re-arrested under Head 31. Under that Head, if a person has been detained for the proper investigation of an offence they cannot generally be re-arrested for the same offence or for another offence that the arresting Garda member suspected them of or ought reasonably to have suspected them of at the time of the arrest. In those circumstances, an arrest can only take place in two circumstances: first, under a warrant granted on the basis that new information gives rise to the need for further detention, and second, for the purpose of charge.

This Head deals with the detention of a person where they have been arrested under a warrant in the first of those circumstances. The person can be detained as though arrested for the first time.

The difference for a person re-arrested is that, where both the first offence for which the person was arrested, and the offence for which they were re-arrested, were Schedule 5 offences, then the extension of 24 hours must be granted by a Court, rather than by a chief superintendent. This reflects the current position in section 4(3) of the 1996 Act and section 51(3) of the 2007.

Subhead (2) reflects section 10(3) of the 1984 Act. It provides that a person cannot be subject to detention under this Bill where they have previously been detained under section 30 of the OASA 1939 for the same offence or an offence which the arresting Garda suspected them of or ought to reasonably have suspected them of at the time of the arrest.

Head 57 – Detention following arrest of prisoner or child detainee

(1) A person arrested under *Head 32* shall be taken forthwith to a Garda custody facility and, subject to this *Head* may be detained there in accordance with this *Part*.

(2) *Head 31* and *Head 50(2)* and (3) shall not apply to a person arrested under *Head 32* and detained under this section.

(3) If at any time during the detention of a person under this *Head* there are no longer reasonable grounds for—

(a) suspecting that the person has committed the offence or offences in respect of which he or she was arrested under *Head 32*, or

(b) believing that his or her detention is necessary for the proper investigation of that offence or those offences,

the detention shall be terminated forthwith.

(4) On termination of the detention in accordance with *subhead (3)* or by reason of the expiry of the period of detention authorised under this *Part*, the member of the Garda Síochána in charge of the Garda custody facility where the person is detained shall transfer him or her, or cause him or her to be transferred, forthwith back into the custody of, as the case may be—

(a) the governor of the prison where the person was imprisoned at the time of the arrest,

(b) the Director of the place of detention where the child detainee was detained or remanded, as the case may be, at the time of the arrest,

(c) the Director of the children detention school—

(i) where the child detainee was detained at the time of the arrest, or

(ii) in which the remand centre where the child detainee was remanded at the time of the arrest was situated within the meaning of section 88 of the Act of 2001,

or

(d) the board of management of the remand centre where the child detainee was remanded at the time of the arrest, if the remand centre is not situated within the meaning of section 88 of the Act of 2001 in a children detention school.

(5) *Subhead (4)* shall not apply where the person is to be charged with the offence concerned and brought before the District Court.

(5) This *Head* shall not prejudice any power conferred by law apart from this *Head* in relation to the arrest, detention or transfer of prisoners or child detainees.

Explanatory note

This *Head* is based on subsections (3) to (7) of section 42 of the Criminal Justice Act 1999 (as amended) and will replace those subsections.

It provides for the detention of a prisoner or child detainee for the investigation of an offence following an arrest under *Head 32*.

Under *Subhead (1)*, the person is to be taken to a Garda custody facility and may be detained there under *Head 44*. At present, a person arrested under section 42 of the 1999 Act cannot be detained for questioning for an extended period of time under section 50 of the 2007 Act or section 2 of the 1996 Act. This anomaly is to be rectified in this *Head*.

Subhead (2) provides that Head 50, which requires the person to be released where there are no longer reasonable grounds for suspecting that they committed an offence, does not apply in this situation. Subheads (3) and (4) provide that instead, the detention must be terminated and the person must be returned to prison or other place where they were detained previously.

Subhead (5) provides that the obligation to return a person to a prison or other place where they were detained previously does not apply if the person is to be charged with the offence and brought before the District Court.

Subhead (6) provides that the Head shall not prejudice other powers of arrest, detention or transfer of prisoners.

Head 58 – Amendment of Criminal Procedure Act 2010

Provide that:

Section 16 of the Criminal Procedure Act 2010 is amended—

(a) in subsection 4 by the substitution of “authorised under Head 44 of the Garda Síochána (Powers) Act 2021” for “authorised under section 4 of the Act of 1984”, and

(b) by the substitution of the following for subsection 6—

“(6) Head 31 and Head 50(2) and (3) of the Garda Síochána (Powers) Act 2021 shall not apply to a person arrested and detained under this section.”.

Explanatory Note

The purpose of this Head is to apply the new detention provisions under the Bill, as appropriate, to detention under the circumstances provided for in section 15 of the Criminal Procedure Act 2010 that is where a person is re-arrested following an acquittal where new evidence comes to light after the conclusion of the trial.

Chapter 7 – Other detention provisions

Head 59 – Custody record

(1) A record, in this Bill referred to as the “custody record”, shall be kept in respect of each person in custody in a Garda custody facility.

(2) The custody record may be kept in electronic or written form.

(3) The custody record shall contain—

(a) in relation to a person who has been brought to the station following arrest, a record of—

- (i) the date, time and place of arrest and the identity of the arresting member (or other person effecting the arrest),
- (ii) the time of arrival at the station,
- (iii) the nature of the offence or other matter in respect of which he was arrested, and
- (iv) any relevant particulars relating to his or her physical or mental condition, and

(b) such matters as may be set out in the Code of Practice under *Head 64*.

(4) In addition to the matters referred to in *subhead (3)*, the custody record shall record the following matters—

(a) a record of the time of the giving of the information specified in *subhead (2)* of *Head 38* and the notice specified in *subhead (4)* of that Head,

(b) where a person has been notified of his or her right to consular services under *Head 41*, a record of the time when the person was informed or notified, when any request was made, when the request was complied with and when any communication was forwarded to a consul,

(c) where fingerprints or palm prints have been taken from the person, or photographs have been taken of the person, a record of that fact, and a record of any consent or authorisation given,

(d) where the person has objected to the suspension of questioning for a rest period under *Head 39*, a record of that fact,

(e) where questioning during the hours of midnight and 8am has been authorised under *Head 39(6)*, a record of the authorisation or any withdrawal of such an authorisation,

(f) where the person has waived their right to legal representation under *Head 43*, or revoked such a waiver, a record of that fact,

(g) where the person is searched under *Head 37*, a record of—

- (i) the fact of the search,
- (ii) the name of the person conducting the search and the names of those present, and
- (iii) a record of particulars of any property taken from or handed over by a person in custody.

(h) a record of any direction extending detention, in accordance with *Head 46*.

Explanatory note

Head 59 provides for the maintenance of a custody record. It is based on various provisions currently in the 1984 Act and the Treatment of Persons in Custody Regulations.

Subhead (1) requires a custody record to be kept in relation to each person in custody in a Garda custody facility. It is based on Regulation 6 of the Custody Regulations.

Subhead (2) provides that the record may be kept in written or electronic form.

Subhead (3) sets out what must be recorded in the custody record.

Paragraph (a) is from Regulation 6 of the Custody Regulations.

Paragraph (b) provides that a record must be made of the fact that information has been given to the person under *Head 38* along with a notice of their rights.

Paragraph (c) requires a record to be made of the fact that a person has been informed of their right to consular assistance and any request made for such assistance. This is from Regulation 14(5) of the Custody Regulations.

Paragraph (d) requires a record to be made in relation to the taking of fingerprints. This is from Regulation 18 of the Custody Regulations.

Paragraphs (e) requires a record to be made when a person objects to questioning being suspended during the night, or when an authorisation has been given to question rather than suspend questioning during the night, or when that authorisation has been withdrawn. This is provided for in section 7 of the Criminal Justice Act 2007 which would amend section 4 of the 1984 Act but has not yet been commenced.

Paragraph (f) requires a record to be made when a person waives their right to legal representation or revokes such a waiver.

Paragraphs (g) and (h) require records to be made of searches carried out in the station.

Head 60 – Electronic Recording of Interviews

(1) Subject to *subhead (2)*, any interview conducted at a Garda custody facility of a person detained under this *Part* shall be made by electronic recording.

(2) If the recording equipment or a recording medium is not available for use or fails to work at the commencement of an interview or through the course of the interview, a member of the Garda Síochána present at the interview shall make a written note of that interview.

(3) Nothing in this Head precludes the recording by electronic means of any interview or statement not referred to in *subhead (1)*.

Explanatory Note

Head 60(1) expressly provides for the recording of interviews at Garda Stations or other places of detention by electronic recording.

Head 60(2) provides for those instances where electronic recording equipment, recording devices or recording mediums may fail at the start of an interview or mid-interview. In such circumstances, a member shall make a written note of the interview.

Head 61 – Supplementary Note

(1) At the conclusion of any interview made by electronic recording, a member of the Garda Síochána present at the interview shall make a supplementary note of that interview.

(2)(a) A supplementary note shall include—

- (i) the name of the person interviewed,
- (ii) the names of any other persons present at the interview,
- (iii) the date, time of commencement, duration and the place of the interview,
- (iv) the identification number, filename or other reference of the electronic recording,
- (v) any admission of guilt or admissions of guilt made during the course of the interview with a time entry or time entries of the admission or admissions from the electronic recording, and
- (viii) the name, rank and signature of the member making the supplementary note and the date and time of signature.

(b) A supplementary note may include any other relevant information from the interview with a time entry or time entries of the information from the electronic recording,

(c) Any time entry or time entries made should be recorded in hours, minutes and seconds using the clock shown from the electronic recording.

Explanatory note

Head 61 provides for a ‘supplementary note’ post-interview to assist the DPP in deciding whether there is sufficient information to prosecute. The supplementary note should be included in the Book of Evidence.

Head 61(2) provides the detail to be included in any supplementary note made.

Head 61(2)(a)(iv) has been based on the wording of Paragraph 4.13 – Code E of the PACE Act.

Head 61(2)(a)(v) provides that a supplementary note should include any admission of guilt made.

Head 61(2)(a)(viii) has been provided to validate or authenticate any supplementary note made and is based on the wording of Regulation 12(11)(b)(iii) of the Custody Regulations.

Head 61(2)(b) has been added to allow a member to add any standout or noteworthy detail or details from an interview.

Head 61(2)(c) provides any time entry or time entries made should be recorded in hours, minutes and seconds using the clock shown from the electronic recording.

Head 62 – Authorised Officers

Provide that:

(1) An authorised officer may, if and for so long as he or she is accompanied by a member of the Garda Síochána, attend at, and participate in, the questioning of a person detained pursuant to *Head 44*, *Head 56* or *Head 57* in connection with the investigation of an offence but only if the accompanying Garda member is satisfied that the attendance at, and participation in, such questioning by an authorised officer is necessary for the proper investigation of the offence concerned.

(2) Any authorised officer who attends at, and participates in, the questioning of a person in accordance with *subhead (1)* may not commit any act or make any omission which, if committed or made by a member of the Garda Síochána, would be a contravention of any Code of Practice made under *Head 64*.

(3) An act committed or omission made by an authorised officer who attends at, and participates in, the questioning of a person in accordance with *subhead (1)* which, if committed or made by a member of the Garda Síochána, would be a contravention of any Code of Practice made under *Head 64* shall not of itself render the authorised officer liable to any criminal or civil proceedings or of itself affect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him or her.

(4) Sections 56 and 57 of the Criminal Justice Act 2007 are amended by the insertion of “or by an authorised officer under Head 62 of the Garda Síochána (Powers) Act 2021” after “member of an Garda Síochána” in each place it occurs.

(5) In this Head—

“authorised officer” means—

- (a) any officer who is an officer of the Revenue Commissioners
- (b) any officer of the Competition and Consumer Protection Commission,
or
- (c) any officer of the Minister for Social Protection.

Explanatory note

Head 62 mirrors section 58 of the Criminal Justice 2007, which amends section 8 of the Criminal Assets Bureau Act 1996 to provide for the attendance by an officer of the Revenue Commissioners or the Minister for Social Welfare at the interview of an accused person, in addition to a Garda member, at a CAB investigation. Head 62 similarly permits authorised officers, accompanying Garda members, to participate in the questioning of a person detained under this Bill. In this Head, “Authorised officer” is defined as an officer of the Revenue Commissioners, an officer of the Competition and Consumer Protection Commission (CCPC) or an Officer of the Minister for Social Protection.

This Head will replace provisions of the Criminal Assets Bureau Act 1996, the Taxes Consolidation Act 1997, and the Competition and Consumer Protection Commission Act 2014, which allow for the attendance of bureau officers, revenue officers and officers of the CCPC to attend at interviews and participate in questioning.

Subhead (4) amends sections 56 and 57 of the Criminal Justice Act 2007. Section 56 provides for a copy of the recording of questioning by a member of the Garda Síochána to be given to a person. Section 57 provides for the admissibility in evidence of an electronic recording of the questioning of a person by a member of the Garda Síochána. The purpose of these amendments is to ensure that these sections also apply where questioning is carried out under this Head by authorised officers.

Head 63 – Savings and exceptions

Provide that:

(1) Nothing in this *Part* shall affect the operation of section 30 of the Act of 1939.

(2) The powers conferred by this *Part* are without prejudice to any powers exercisable by a member of the Garda Síochána in relation to offences other than offences to which this Part applies.

Explanatory note

This Head provides that nothing in this Part will affect the operation of the Offences Against the State Act 1939. This provision will need to be examined in the context of the review of that Act currently underway.

Further savings and exceptions will also need to be considered in relation to this Part during drafting.

Head 64 – Code of Practice on custody and detention

(1) The Commissioner shall, as soon as practicable after the commencement of this section and following consultation with—

- (a) the Policing Authority,
- (b) the Garda Síochána Inspectorate, and
- (c) the Irish Human Rights and Equality Commission,

prepare for submission to the Minister a draft Code of Practice for the purposes of providing practical guidance for the carrying out of the powers under this *Part* by members of the Garda Síochána.

(2) The Code of Practice shall provide for the following—

- (a) the treatment of persons detained in Garda custody on suspicion of the commission of an offence;
- (b) such other matters related to the detention as the Minister deems appropriate.

(3) The Code of Practice shall provide for procedures in relation to access to a legal representative by persons detained in Garda custody facilities and, without prejudice to the generality of the foregoing, the Code may make provision for the maximum period of time which may be excluded in reckoning a period of detention under *Head 42(2)*.

(5) For the purposes of *Head 59*, the Code of Practice shall prescribe—

- (a) the information to be recorded,
- (b) the means of recording and storing the information,
- (c) the circumstances under which the record may be retained, disclosed and destroyed and the procedures for such retention, disclosure and destruction.

(6) When preparing a Code of Practice under this Head, the Commissioner shall have regard to the following—

- (a) the obligation on members of the Garda Síochána to act with diligence and determination in the investigation of crime and the protection and vindication of the rights of victims and the protection of the public;
- (b) the fact that every instance where a person is detained in Garda custody is an interference with right to liberty of the person;
- (b) any such detention must be necessary and proportionate to the legitimate objectives to be achieved; and
- (c) any decision to detain a person must be based on fair and objective grounds that do not discriminate between persons on the basis of personal characteristics.

(7) A Code of Practice prepared under this Head shall be submitted to the Minister for approval.

(8) The Minister may approve, or approve subject to modifications, a Code of Practice submitted to the Minister under *subsection (7)* and, when a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.

(9)(a) A Code of Practice approved under this Head may be amended or revoked.

(b) Amendments to such a Code of Practice, other than amendments of a minor or technical nature, shall be submitted to the Minister for approval.

(c) If it is proposed to revoke a Code of Practice approved under this section, the proposed revocation shall be submitted to the Minister for approval.

(10) The Minister may approve, or approve subject to modifications, an amended Code of Practice submitted to the Minister under *subsection (9)(b)* and, when such a Code of Practice has been so approved, it shall apply and have effect in accordance with its terms.

(11) The Minister may approve the revocation of a Code of Practice.

(12) A Code of Practice, or an amended Code of Practice, approved by the Minister under this Head shall be made publicly available by the Commissioner.

(13) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall not of itself render that person liable to any criminal or civil proceedings or of itself affect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him.

(14) A failure on the part of any member or civilian staff of the Garda Síochána to observe any provision of the Code of Practice shall render him or her liable to disciplinary proceedings.

Explanatory note

This Head requires the Commissioner to prepare, for the Minister's approval, a Code of Practice to be followed by members of the Garda Síochána in the exercise of detention powers.

It is based on section 157 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014. Subhead (1) provides for the power. Subhead (2) provides that the Code will include provisions relating to the treatment of persons detained in Garda custody and will effectively replace the existing Custody Regulations. Subhead (3) provides for procedures on access to a lawyer and subhead (4) requires the Code to set out the information which will be contained in the custody record. Subhead (6) provides for the principles which govern the making of the codes. Subheads (7) to (12) relate to the approval, modification and revocation of codes of practice, and their publication. Subheads (13) and (14) are based on section 164 of the 2014 Act, and section 7 of the Criminal Justice Act 1984.

Part 7 – Miscellaneous provisions

Head 65 – Use of Reasonable force

- (1) Subject to this Head, when acting in the course of his or her duty, under any provision of this Bill, a member of the Garda Síochána may use such force as is reasonably necessary—
 - (a) in order to compel a person to comply with a requirement to stop a vehicle, and such force may include the placing of a barrier or other device in the path of vehicles; or
 - (b) To enter a premises or any part of a premises, or to open or inspect any container, where such entry, opening or inspection is authorised by any provision of this Bill or by a warrant issued in accordance with *Head 16*;

- (2) Subject to this Head, an applicant may use such force as is reasonably necessary to enter a premises or part of a premises where such entry is authorised by a warrant issued in accordance with *Head 16*.

- (3) Subject to this Head, a member of the Garda Síochána may use such force as is reasonably necessary to effect or maintain an arrest under this Bill.

- (4) Subject to this Head, any person may use such force as is reasonably necessary to effect an arrest under *Head 25* or assist in an arrest.

- (5) Force may only be used, in accordance with subheads (1), (2), (3) and (4) where in all the circumstances as the person believes them to be -
 - (a) force is reasonably necessary to achieve the legitimate objective being pursued; and
 - (b) the degree of force is no more than is reasonably necessary for that purpose.

- (6) Where the circumstances in subhead (3) are such that the member believes -
 - (a) a person is doing, or is about to do, something likely to cause serious harm to, or the death of, another person; and
 - (b) he or she cannot prevent the serious harm or death in another way,

the force used may include force likely to cause serious harm to a person or the person's death.

- (7) If the member believes it is necessary to use force likely to cause serious harm to a person or the person's death, the member must, if practicable, first call on the person to stop doing the act.

- (8) For the purposes of this section the question as to whether an arrest was lawful under this Bill or whether paragraph (a) or (b) applies shall be determined according to the circumstances as the person using the force believed them to be.

- (9) For the purposes of *this Head*—
 - (a) a person uses force in relation to another person or property not only when he or she applies force to, but also where he or she causes an impact on, the body of that person or that property;
 - (b) a person shall be treated as using force in relation to another person if—
 - (i) he or she threatens that person with its use, or

- (ii) he or she detains that person without actually using it; and
- (c) a person shall be treated as using force in relation to property if he or she threatens a person with its use in relation to property.

(10) This Head shall apply in relation to acts immediately preparatory to the use of force as they apply in relation to acts in which force is used.

(11) A threat of force may be reasonable although the actual use of force may not be.

(12) The fact that a person had an opportunity to retreat before using force shall be taken into account, in conjunction with other relevant evidence, in determining whether the use of force was reasonable.

Explanatory note

The purpose this Head is to provide for the use of force in the exercise of the powers set out in the Bill.

These include replacing existing statutory provisions on the use of force including:

- in subhead (1)(a), the use of force to stop a vehicle, vessel, aircraft in provisions permitting the stopping of such (e.g. provision in sec. 8 of the 1976 Act); and
- in subhead (1)(b), the use of force in the exercise of a search warrant.

Subhead (3) allows persons other than members of the Garda Síochána who are executing a search warrant under Head 16 to use reasonable force to enter a place.

Subhead (3) and (4) provides for a further codification of the common law power to use force when effecting and maintaining, and assisting in an arrest. It is intended that this will replace section 19 of the Non-Fatal Offences Against the Person Act 1997 as it is not clear whether that provision applies to lethal force given that it is contained in the Non-fatal Offences Against the Person Act.

Subhead (4) provides for the use of force by any person when effecting an arrest under Head 25 (which relates to citizen's arrest). This is also currently covered by section 19 of the Non-fatal Offences Against the Person Act 1997.

Subhead (5) provides a number of safeguards to be exercised when using force e.g. where the use of force is authorised under any provision of this Act, force may only be used where reasonably necessary and the degree of force shall not exceed that reasonably required in the circumstances. The aim is not to change the law here but to clearly state it. There is a subjective element, as in the Non-fatal Offences Against the Person Act, in that what is reasonable is to be determined by the circumstances as the person using the force believes them to be.

Subheads (6) and (7) deal with the use of lethal force in effecting and maintaining an arrest.

Subhead (8) is based on section 19 and 18(5) of the Non-fatal Offences Against the Person Act 1997.

Subheads (9) to (12) are based on section 20 of the Non-fatal Offences Against the Person Act 1997. They define what is meant by 'force'.

This Head does not provide for the use of force in taking photographs, fingerprints and samples currently under the provisions of the 1984 Act. This is provided for separately in Head 56.

Head 66 – Power to seize and retain evidence

Provide that:

- (1) Where a member of the Garda Síochána who is in—
 - (a) a public place, or
 - (b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,finds or comes into possession of anything, and he or she has reasonable grounds for believing that it is evidence of, or relating to, the commission of an offence, he or she may seize and retain the thing for use as evidence in any criminal proceedings for such period from the date of seizure as is reasonable or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings, and thereafter the Police (Property) Act 1897 shall apply to the thing so seized in the same manner as that Act applies to property which has come into the possession of the Garda Síochána in the circumstances mentioned in that Act.
- (2) If it is represented or appears to a member of the Garda Síochána proposing to seize or retain a document under this section that the document was, or may have been, made for the purpose of obtaining, giving or communicating legal advice from or by a barrister or solicitor, the member shall not seize or retain the document unless he or she suspects with reasonable grounds that the document was not made, or is not intended, solely for any of the purposes aforesaid.
- (3) The power under this section to seize and retain evidence is without prejudice to any other power conferred by statute or otherwise exercisable by a member of the Garda Síochána to seize and retain evidence of, or relating to, the commission or attempted commission of an offence.

Explanatory note

Head 66(1) provides a power to seize and retain any items found by a member of the Garda Síochána which he or she reasonably suspects may be evidence of an offence, for use as evidence in proceedings for that offence.

Head 66 is based on section 7 of the Criminal Justice Act 2006 which provides for seizure and retention. The provision retains the elements of the power in section 7 but is expanded to include non-arrestable offences, whereas section 7 applies only to arrestable offences. This provision will also replace the seizure power under section 9 of the Criminal Law Act 1976 which provides a similarly broad power and does apply to non-arrestable offences. If the latter is to be repealed, provision will need to be made for seizure and retention by prison officers and members of the defence forces.

Subhead (2) is based on section 7 of the Criminal Justice Act 2006 and provides for retention of items seized for such time as is reasonable or for as long as the criminal proceedings continue, after which they become subject to the provisions of the Police (Property) Act 1879. This is the same wording as is used in section 7 of the Criminal Law Act 1976.

Subhead (3) is identical to section 7(2) of the Criminal Justice Act 2006 and the comparable paragraph of section 9 of the Criminal Law Act 1976. It prohibits the seizure of documents which appear or are represented to be legal advice.

Head 67 – Provision of information and obstruction

Provide that:

- (1) Where a member of the Garda Síochána has reasonable grounds to suspect that a person has committed, or is committing, an offence or is in possession of a relevant article within the meaning of *Head 9*, the member may require the person to provide his or her name, address and date of birth.
- (2) A person who—
 - (a) in relation to a requirement under *subhead (1)*, gives a name, address or date of birth which is false or misleading in a material respect,
 - (b) obstructs or attempts to obstruct any member of the Garda Síochána acting under powers conferred by this Bill;
 - (c) obstructs or attempts to obstruct a member or designated person acting under the authority of a search warrant under *Head 15*, or
 - (d) fails to comply with a requirement under *Head 9(1), (2) or (3)*, or *Head 16(1)*.
is guilty of an offence and is liable—
 - (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
 - (ii) on conviction on indictment, to a fine not exceeding €30,000 or imprisonment for a term not exceeding 5 years or both.

Explanatory note

This Head creates a power for a member of the Garda Síochána to require the name, address and date of birth of a person who the member suspects has committed or is committing any offence. This is power Gardaí currently have in respect of many offences on the statute book, but not all. It is necessary to apply this power to all offences so that Gardaí can prosecute a person for an offence by way of summons, without effecting an arrest under the new general arrest power. Gardaí will also have a power to seek the name, address and date of birth of a person whom they reasonably suspect to be in possession of a relevant article under Head 9.

It shall be an offence for a person to fail to give his or her name, address and date of birth to a Garda when requested to do so under this Head.

The Head also creates an offence for obstructing a Garda in exercising his or her powers under the Bill or following specific directions given by a Garda under Heads 9, 15 or 16 of the Bill.

The penalty for an offence under this Head is set at a maximum of a class A fine or imprisonment of up to 12 months on summary conviction which is typical for most obstruction offences. However, a higher level penalty of €30,000 or imprisonment of up to 5 years is available on conviction on indictment (the same level as that available for a similar offence under the Criminal Justice (Forensic Evidence and DNA Database) Act 2014, to account for circumstances where the obstruction offence relates to a very serious offence.

Head 68 – Effect of failure to comply with Act on admissibility of evidence

Provide that:

A failure by a person exercising any powers under this Bill to comply with any provision of this Bill shall not, of itself, affect the admissibility in evidence of any evidence seized or otherwise obtained through the use of that power.

Explanatory note

This Head provides that a failure to comply with a provision of the Bill does not necessarily affect the admissibility of evidence. The admissibility of evidence is a matter for the Court to determine during the course of trial and the purpose of this Head is to ensure that remains the case.

Schedule 1 – Repeals

Section 4

Session and Chapter or Number and Year	Short Title	Extent of Repeal
5 & 6 Vict., c. 24 Number 24 of 1842	Dublin Police Act 1842	Stop and search element of section 29 (but not arrest without warrant provision or power/duty of <u>any person</u> to apprehend and detain person offering stolen goods unless these are replaced elsewhere in the Bill).
Number 93 of 1851	Petty Sessions (Ireland) Act 1851	Section 6
Number 69 of 1874	Licensing Act (Ireland) 1874	Section 24
Number 17 of 1875	Explosives Act 1875	Section 73
Number 3 of 1883	Explosive Substances Act 1883	Section 8(1)
Number 69 of 1885	Criminal Law Amendment Act 1885	Section 10
Number 17 of 1925	Firearms Act 1925	Sections 22(4) and 24. Section 25.
Number 45 of 1926	Wireless Telegraphy Act 1926	Section 8(1) [References to AGS only, as this applies to other authorities].
Number 6 of 1935	Criminal Law (Amendment) Act 1935	Section 19(1)
Number 1 of 1946	Censorship of Publications Act 1946	Section 17
Number 2 of 1951	Criminal Justice Act 1951	Section 15
Number 2 of 1956	Gaming and Lotteries Act 1956	Section 39
Number 21 of 1962	Intoxicating Liquor Act 1962	Section 26(9)
Number 1 of 1963	Official Secrets Act 1963	Section 19(6)
Number 10 of 1963	Copyright Act 1963	Section 27(5)
Number 32 of 1976	Criminal Law Act 1976	Sections 8 and 9
Number 12 of 1977	Misuse of Drugs Act 1977	Sections 23 and 26
Number 22 of 1984	Criminal Justice Act 1984	Sections 4, 4A, 4B, 4C, 5, 5A, 5B, 6, 6A, 7 and 10
Number 32 of 1986	Control of Dogs Act 1986	Section 26

Number 17 of 1987	National Monuments (Amendment) Act 1987	Section 22(1)
Number. 22 of 1989	Video Recordings Act 1989	Section 25
Number 12 of 1990	Firearms and Offensive Weapons Act 1990	Sections 15 and 16
Number 24 of 1990	Broadcasting Act 1990	Section 14
Number 31 of 1991	Criminal Damage Act 1991	Section 13(1)
Number 20 of 1993	Criminal Law (Sexual Offences) Act 1993	Section 10(2)
Number 11 of 1995	Investment Intermediaries Act 1995	Section 75(1)
Number 24 of 1995	Consumer Credit Act 1995	Section 106
Number 6 of 1996	Trademarks Act 1996	Section 25(2)
Number 29 of 1996	Criminal Justice (Drug Trafficking) Act 1996	Sections 2, 4, 5 and 8
Number 31 of 1996	Criminal Assets Bureau Act 1996	Section 14(1)
Number 37 of 1996	Control of Horses Act 1996	Section 35(1)
Number 38 of 1996	Sexual Offences (Jurisdiction) Act 1996	Section 10(1)
Number 4 of 1997	Criminal Justice (Miscellaneous Provisions) Act 1997	Section 10
Number 14 of 1997	Criminal Law Act 1997	Sections 4, 5 and 6
Number 26 of 1997	Non-Fatal Offences Against The Person Act 1997	Sections 7(2) and 19
Number 10 of 1999	Criminal Justice Act 1999	Section 42
Number 28 of 2000	Copyright and Related Rights Act 2000	Sections 143 and 261(1)
Number 29 of 2000	Illegal Immigrants (Trafficking) Act 2000	Section 7(1)
Number 39 of 2001	Industrial Designs Act 2001	Section 70
Number 50 of 2001	Criminal Justice (Theft and Fraud Offences) Act 2001	Section 48(2)
Number 7 of 2003	Employment Permits Act 2003	Section 2
Number 26 of 2006	Criminal Justice Act 2006	Sections 7 and 68
Number 30 of 2006	International Criminal Court Act 2006	Section 51(5)

Number 29 of 2007	Criminal Justice Act 2007	Section 50
Number 7 of 2008	Criminal Justice (Mutual Assistance) Act 2008	Section 47(8)
Number 22 of 2010	Criminal Justice (Psychoactive Substances) Act 2010	Section 12
Number 27 of 2010	Criminal Procedure Act 2010	Section 18(2)
Number 29 of 2014	Competition and Consumer Protection Commission Act 2014	Provisions relating to search warrants to be repealed to the extent that they are in substance covered by the Bill
Number 38 of 2014	Companies Act 2014	Provisions relating to search warrants to be repealed to the extent that they are in substance covered by the Bill
Number 11 of 2017	Criminal Justice (Offences Against Information Systems) Act 2017	Section 7

Schedule 2

- (a) an offence under the Act of 1939 or an offence that is for the time being a scheduled offence for the purposes of Part V of that Act;
- (b) an offence under sections 2 or 3 of the Criminal Law (Jurisdiction) Act, 1976;
- (c) murder, manslaughter or an offence under section 4 of the Non-fatal Offences Against the Person Act 1997;
- (d) an offence under sections 12, 13 or 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001;
- (e) an offence of malicious damage to property involving the use of fire or of any explosive substance (within the meaning of section 7(1)(e) of the Criminal Law Act 1976);
- (f) an offence under the Firearms Acts, 1925 to 2009;
- (g) escape from lawful custody;
- (h) an offence under section 112 (2) of the Road Traffic Act, 1961;
- (i) an offence under section 11 of the Air Navigation and Transport Act, 1973, or under section 10 of the Criminal Law (Jurisdiction) Act, 1976;
- (j) an offence under the Criminal Law Act 1976;
- (k) an offence under section 12(1) of the Firearms and Offensive Weapons Act, 1990;
- (l) an offence under sections 15, 16 or 17 of the Non-fatal Offences Against the Person Act 1997;
- (m) an offence under section 3 of the Child Trafficking and Pornography Act 1998;
- (n) an offence under section 2 of the Illegal Immigrants (Trafficking) Act, 2000; and
- (o) an offence under section 2 or section 4 of the Criminal Law (Human Trafficking) Act 2008.

Explanatory note

This Schedule sets out the offences to which Head 10 (stop and search of vehicles) applies. It is taken from the Criminal Law Act 1976, but with some changes. Some references to legislation have been updated. The application of the Head is to be extended to false imprisonment, abduction and human trafficking offences.

Schedule 3 – Summary offences for which a search warrant can be obtained

Session and Chapter or Number and Year	Short Title	Section number [to refer to sections providing for offences for which a search warrant can be obtained under existing legislation]
Number 49 of 1874	Licensing Act (Ireland) 1874	
Number 17 of 1875	Explosives Act 1875	
Number 17 of 1925	Firearms Act 1925	
Number 45 of 1926	Wireless Telegraphy Act 1926	
Number 1 of 1946	Censorship of Publications Act 1946	
Number 2 of 1956	Gaming and Lotteries Act 1956	
Number 21 of 1962	Intoxicating Liquor Act 1962	
Number 1 of 1963	Official Secrets Act 1963	
Number 10 of 1963	Copyright Act 1963	
Number 12 of 1977	Misuse of Drugs Act 1977	
Number 17 of 1987	National Monuments (Amendment) Act 1987	
Number. 22 of 1989	Video Recordings Act 1989	
Number 24 of 1995	Consumer Credit Act 1995	
Number 20 of 1993	Criminal Law (Sexual Offences) Act 1993	
Number 6 of 1996	Trade Marks Act 1996	
Number 7 of 2003	Employment Permits Act 2003	

Schedule 4 – Regulatory search warrants

Session and Chapter or Number and Year	Short Title
Number 29 of 2014	Competition and Consumer Protection Commission Act 2014
Number 38 of 2014	Companies Act 2014

Schedule 5

Head 36 - Serious offences for purposes of detention

Offences for which detention period may be extended up to a maximum of 168 hours—

- (a) a drug trafficking offence within the meaning of section 3 of the Criminal Justice Act 1994;
- (b) murder;
- (c) manslaughter;
- (d) an offence under section 15 of the Act of 1925;
- (e) an offence under section 15 of the Non-Fatal Offences Against the Person Act 1997 involving the use of a firearm;
- (f) an offence under Part 7 of the Criminal Justice Act 2006;
- (g) an offence under section 3 of the Child Trafficking and Pornography Act 1998; and
- (h) an offence under section 2 or 4 of the Criminal Law (Human Trafficking) Act 2008.

Explanatory note

This Schedule lists the offences to which the extended periods of detention provided for in Heads 45 and 47 apply. The offences listed in this Schedule are—

at (a) the offences covered by the Criminal Justice (Drug Trafficking) Act 1996 to which section 2 applies and provides for a maximum period of detention of up to 168 hours;

at (d) – (f) the offences covered by the section 50 of the Criminal Justice Act 2007 which provide for a maximum period of detention of up to 168 hours.

For consistency and to facilitate the investigation of specific complex offences, the Scheme makes the extended (one week) detention period available in respect of an investigation of a number of additional offences, namely any form of murder (it currently applies only to murder with a firearm or explosive, capital murder or murder carried out in connection with subversive activities or an unlawful organisation) and to human trafficking offences.