

Transparency International Ireland
Submission on Garda Síochána Act 2005 (Act)
April 2014

Further to the Joint Committee on Justice, Defence and Equality's invitation, Transparency International Ireland (TII) makes the following submissions on the effectiveness of the Act and associated regulations, insofar as they relate to the oversight of An Garda Síochána. Please note that these recommendations are not exhaustive.

Introduction

TII is the Irish chapter of Transparency International, a global movement against corruption (defined as the abuse of entrusted power for private gain).

It was founded in 2004 and is part of the only global organisation dedicated to stopping corruption worldwide. Its vision is an Ireland that is open and fair – and where entrusted power is used in the interest of everyone. TI Ireland's mission is to empower people with the support they need to promote integrity and stop corruption in all its forms.

In support of its mission, TI Ireland launched its Speak Up helpline in May 2011, a service for anyone facing an ethical dilemma or considering reporting wrongdoing at work.¹

TII notes that the Government has stated that it is committed to reform of Garda oversight and accountability, including by the establishment of an independent Garda Authority. TII welcomes this development.²

Recommendations

1. Part 2, Chapter 2 – Personnel and Organisation

Sections 9 and 10 of Act provide for the appointment of the Garda Commissioner and Deputy and Assistant Garda Commissioners. Section 11 makes provision for their removal by the Government.

TII recommends that these functions should be transferred to the proposed independent Garda Authority. Such an amendment would bring Ireland in line with other jurisdictions such as Northern Ireland and help address the risk and perception of political or undue Executive interference in policing.³

¹ TII has served some 400 citizens and whistleblowers since 2011. More recently, it provided assistance and support to Garda whistleblowers, John Wilson and Sergeant Maurice McCabe.

² TII notes that the United Nations Office on Drugs and Crime's *Handbook on police accountability, oversight and integrity* (2011) (available at http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf) states that it is crucial to have a complementary, independent institution overseeing the police system. It further states that the institution must report to parliament and make its reports public. (See page 49)

³ As explained on page 25 of the Association of Police Authorities' *International comparison research: models of police governance and accountability* (2009) (available at <http://www.nipolicingboard.org.uk/3858ap4.pdf>), the police accountability model in Northern Ireland is based on extensive research taken at an international level by the Independent Commission on Policing.

2. Part 2, Chapter 3 – Roles of Minister and Garda Commissioner

TII submits that the Minister’s functions under Section 20, 21 and 23 should be transferred to the proposed independent Garda Authority.⁴ This would help reduce the risk of political interference and control over An Garda Síochána and open the organisation up to greater independent scrutiny.⁵

3. Part 2, Chapter 5 – Accountability of Members for discharge of official duties and duty of Garda Commissioner to account to the Government, etc.

TII recommends that the duty under Section 41 requiring the Garda Commissioner to keep the Minister and the Secretary General of the Department of Justice, Equality and Law Reform fully informed of certain matters, be extended to include informing the proposed independent Garda Authority of those matters, so as to assist the new authority in effectively discharging its duties.

4. Part 2, Chapter 9 – Offences and Disclosure of Information

Section 62(1) of the Act prohibits the disclosure of information by members of An Garda Síochána (and certain others) where disclosure is likely to have a harmful effect. Section 62(4) provides that the prohibition in subsection (1) does not apply where disclosure is made to a prescribed list of persons including, for example, a member of either of the Houses of the Oireachtas where relevant to the proper discharge of the member’s functions. This is an important channel for members of An Garda Síochána through which they can report concerns in the public interest, particularly where all other avenues have been exhausted without success.

However, section 62(4) does not protect members of An Garda Síochána who disclose information under that provision from being disciplined for having done so. We are aware of recent threats of disciplinary action having been made against a serving member of An Garda Síochána who subsequently availed of his right to share information with members of the Dáil Committee of Public Accounts. Although such threats were not followed through, they are likely to serve as discouragement to other members of the service from coming forward with information to members of the Oireachtas.

TII therefore recommends that a new subsection (5) be inserted in the following terms and the existing subsections renumbered accordingly:

“(1) A person who in good faith discloses information under section 62(4) shall not be subjected to disciplinary action for so doing.

(2) Any harassment or intimidation of such a person shall be dealt with in accordance with the law and the relevant disciplinary regulations or disciplinary code.”

⁴ Such as is provided for in Northern Ireland.

⁵ Section 20 of the Act provides the Minister with powers to determine and revise priorities and performance targets for An Garda Síochána. Section 21 imposes an obligation on the Garda Commissioner to submit a strategy statement to the Minister for approval at least every three years, while section 23 requires the submission of a review report after each three year period. Section 23 confers upon the Minister the power to issue written directives to the Garda Commissioner and compels the Garda Commissioner to comply with such directives.

The Act should also specify clear penalties for breaches of the amended subsection 62(5). Such penalties should also be specified in the amended Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007.

Alternatively, TII submits that consideration be given to include disclosures under section 62(4) of the Act within the definition of a ‘protected disclosure’ for the purposes of the Protected Disclosure Bill 2013.

5. Part 3 – Establishment and Functions of Garda Síochána Ombudsman Commission

TII notes that the Ombudsman Commission was previously unable to access An Garda Síochána’s PULSE database system. TII welcomes the Minister for Justice’s recent announcement that he and the former Garda Commissioner agreed that the Ombudsman Commission will have direct access to the PULSE system in future investigations and that the revised protocols between the Garda Commissioner and the Chairperson of the Ombudsman Commission will be amended accordingly.⁶ TII considers that this arrangement is essential for the effective investigation of reports and that it should be given statutory protection. TII recommends that section 63 of the Act should be amended in this regard.

Section 67(2) of the Act should be amended to allow for the Garda Síochána Ombudsman Commission to investigate reports made under Regulation 7(2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 against the Commissioner.

6. Part 5 - Establishment and Functions of Garda Síochána Inspectorate

TII recommends that section 117(2) be amended to (i) also allow the Garda Authority to commission inspections and inquiries by the Inspectorate and (ii) confer a discretion upon the Inspectorate to commission its own inspections and inquiries where it considers it to be in the public interest to do so.

7. Part 6 – Regulations relating to reporting corruption and malpractice in the Garda Síochána

Confidential Recipient

It is understood that the Government proposes to remove the post of Confidential Recipient established under section 124 of the Act and the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007.

TII recommends that this position be retained and that consideration be lent to establishing an Office of Confidential Recipient with adequate civilian support to enable professional advice and support to Garda whistleblowers before and after disclosing concerns. This would serve as an internal helpline for Gardaí wishing to safely explore and consider their options before making reports, as well as a channel through which reports could be investigated and acted upon within An Garda Síochána.

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<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014020500003?opendocument#A00200>

While it is recommended that the post of Confidential Recipient be retained and enhanced, it is also recommended that Gardaí be allowed to make protected disclosures directly to the Garda Síochána Ombudsman Commission where they reasonably believe that it is in the public interest to do so.

The right to report through a member of the Oireachtas should be retained consistent with the stepped disclosure provisions planned under section 10 of the Protected Disclosures Bill 2013.

It is also recommended that future candidates for the role of Confidential Recipient be recruited through open competition with the process managed by the Public Appointments Service. Any final decision on his/her appointment should be made by the Garda Authority. The Confidential Recipient and any officials serving under her/him should have relevant experience and qualifications in working with/advising whistleblowers.

Reports about the Commissioner

Furthermore, it is recommended that Regulation 7(2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 should be amended to ensure that where a confidential report contains an allegation of corruption or malpractice on the part of the Commissioner, the confidential recipient shall transmit the report to the Garda Authority and An Garda Síochána Ombudsman Commission.

Periodic reporting and promotion of whistleblower provisions

Regulation 15 of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 should be amended to provide for annual reports to be made directly to the Garda Authority on the number, type and action taken in response to reports made under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007. This report should also be presented to the Minister for Justice and the Oireachtas Joint Committee on Justice, Defence and Equality.

A report should also be provided to the Garda Authority by the Commissioner each year outlining the steps and initiatives, such as training, awareness raising and education undertaken to promote confidential reporting within the service.

Summary of recommendations

In summary, TII recommends that the oversight functions currently undertaken by the Minister under the Act be transferred to the proposed independent Garda Authority.

It also recommends that the Act be amended so that persons such as Garda members can make disclosures in terms of section 62(4) of the Act without the threat of disciplinary action and that the Ombudsman Commission be granted a statutory right to access PULSE.