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*Number 3 of 2015*

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**Garda Síochána (Amendment) Act 2015**

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## **GARDA SÍOCHÁNA (AMENDMENT) ACT 2015**

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ACTS REFERRED TO

Criminal Justice (Surveillance) Act 2009 (No. 19)

Garda Síochána Act 2005 (No. 20)

Garda Síochána Acts 2005 to 2007

Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 (No. 10)

Offences against the State Acts 1939 to 1998

Protected Disclosures Act 2014 (No. 14)



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*Number 3 of 2015*

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## **GARDA SÍOCHÁNA (AMENDMENT) ACT 2015**

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An Act to amend the powers and functions of the Garda Síochána Ombudsman Commission in relation to complaints, investigations and other procedures; for that purpose, to amend the Garda Síochána Act 2005, the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 and the Criminal Justice (Surveillance) Act 2009; to provide for an amendment of the Garda Síochána Act 2005 relating to the functions of the Garda Síochána Inspectorate; and to provide for related matters.

[9th March, 2015]

**Be it enacted by the Oireachtas as follows:**

### **Definition**

1. In this Act “Principal Act” means the Garda Síochána Act 2005.

### **Amendment of section 67(2)(e) of Principal Act**

2. Section 67(2)(e) of the Principal Act is amended by the insertion of “or 102B” after “in accordance with section 102”.

### **Amendment of section 74(3) of Principal Act**

3. Section 74(3) of the Principal Act is amended by the insertion of “or 102B” after “as applied by section 102”.

### **Amendment of section 84(1) of Principal Act**

4. Section 84(1) of the Principal Act is amended by the substitution of “within the period of 12 months” for “within the period of 6 months”.

### **Amendment of section 98(5) of Principal Act**

5. Section 98(5) of the Principal Act is amended by the substitution of the following definition for the definition of “enactment”:

“ ‘enactment’ means a statute or statutory instrument, whether passed or made before or after the passing of this Act or any portion of such a statute or statutory instrument, but does not include any provision of the Offences against the State Acts 1939 to 1998;”.

**Amendment of section 102 of Principal Act**

6. Section 102 of the Principal Act is amended—

(a) in subsection (5), by the substitution of “any matter that gives rise to a concern” for “any matter that appears to the Minister to indicate”, and

(b) by the insertion of the following subsection after subsection (5):

“(5A) The Ombudsman Commission may investigate a matter under subsection (4) or (5) even if—

(a) the identity of the member of the Garda Síochána concerned may not be known when the investigation is undertaken, or

(b) the offence or behaviour concerned may also involve or have involved a person who is not a member of the Garda Síochána.”.

**Investigation of matters relating to Garda Commissioner by Ombudsman Commission**

7. The Principal Act is amended by the insertion of the following section after section 102A (inserted by section 19 of the Protected Disclosures Act 2014):

“**102B.**(1)The Ombudsman Commission may, if it appears to it desirable in the public interest to do so and subject to the consent of the Minister given with the approval of the Government, investigate any matter that gives rise to a concern that the Garda Commissioner may have—

(a) committed an offence, or

(b) behaved in a manner that would constitute serious misconduct.

(2) The Minister may, with the approval of the Government and if he or she considers it desirable in the public interest to do so, request the Ombudsman Commission to investigate any matter that gives rise to a concern that the Garda Commissioner may have done anything referred to in subsection (1), and the Commission shall investigate that matter.

(3) The Minister may, with the approval of the Government, for stated reasons refuse to consent to an investigation by the Ombudsman Commission of any matter under subsection (2).

(4) The Ombudsman Commission may, for the purposes of an investigation of a matter under subsection (1) or (2), direct a designated officer of the Commission to investigate the matter under section 98 and, for that purpose, the reference in section 98(1) to section 91(2)(b), 92(c), 94(8)(a) or 94(11)(b) to investigate a complaint shall be read as a reference to this subsection to investigate a matter under subsection (1) or (2), as the case may be.

(5) Sections 95, 96, 99 and 101 shall apply to an investigation under subsection (1) or (2) by the Ombudsman Commission of a matter relating to the conduct of the Garda Commissioner as they apply to a

matter that is the subject of a complaint concerning the conduct of a member of the Garda Síochána (other than the Garda Commissioner) with the following and any other necessary modifications:

- (a) in section 95, the substitution of the following subsection for subsection (4):

“(4) As soon as practicable after the conclusion of an investigation under this section, the Ombudsman Commission shall report to the Minister on the investigation.”;

- (b) in section 101(6), the substitution of “investigation under section 95, it may proceed in accordance with that section” for “investigation under section 94 or 95, it may proceed in accordance with either of those sections as appropriate”.

#### **Amendment of section 103 of Principal Act**

8. Section 103 of the Principal Act is amended—

- (a) in subsection (1)(b)—

- (i) in subparagraph (i), by the insertion of “if his or her identity is known” after “the subject matter of the investigation”, and
- (ii) in subparagraph (iv), by the substitution of “a sufficient interest in the matter;” for “a sufficient interest in the matter.”,

and

- (b) in subsection (1), by the addition of the following paragraph:

“(c) if the investigation is one to which section 102B applies—

- (i) the Garda Commissioner,
- (ii) the Minister, and
- (iii) any other person that the Commission considers has a sufficient interest in the matter.”.

#### **Provision of information to Ombudsman Commission**

9. The Principal Act is amended by the insertion of the following section after section 103:

“**103A.**The Garda Commissioner shall ensure that information to be provided by the Garda Síochána to the Ombudsman Commission for the purposes of an investigation by the Commission of a complaint, or an investigation by the Commission of any matter under section 102 or 102B, is so provided as soon as practicable.”.

**Examination of certain practices, policies and procedures of Garda Síochána**

**10.** The Principal Act is amended by the substitution of the following section for section 106:

“**106.** (1) For the purpose of preventing complaints arising in relation to a practice, policy or procedure of the Garda Síochána or of reducing the incidence of such complaints—

(a) the Ombudsman Commission may, if it considers it appropriate to do so, or

(b) the Commission shall, if so requested by the Minister within such period as he or she may specify in the request,

examine the practice, policy or procedure.

(2) The Ombudsman Commission shall, before an examination of a practice, policy or procedure under subsection (1), inform the Garda Commissioner in writing of—

(a) if appropriate, the nature of a request from the Minister under subsection (1)(b),

(b) the specific practice, policy or procedure to be examined under subsection (1), and

(c) the reasons for the examination.

(3) The Ombudsman Commission shall—

(a) report to the Minister as soon as practicable or, if appropriate, within such period as the Minister specifies in his or her request under subsection (1)(b) on the results of the examination,

(b) include in the report any recommendations of the Commission for achieving the purpose referred to in subsection (1) in relation to the practice, policy or procedure examined, and

(c) provide the Garda Commissioner with a copy of the report.

(4) Subject to subsection (5), the Minister shall cause copies of any reports received by him or her under subsection (3) to be laid before the Houses of the Oireachtas.

(5) The Minister may exclude from the copies of reports which are to be laid before the Houses of the Oireachtas under subsection (4) any matter which, in his or her opinion—

(a) would be prejudicial to the interests of national security, or

(b) might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person.”

**Amendment of section 117(2) of Principal Act**

**11.** Section 117(2) of the Principal Act is amended by the substitution of the following

paragraph for paragraph (a):

“(a) in furtherance of its objective to carry out, if it considers it appropriate to do so or at the request of the Minister, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána,”.

**Amendment of Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993**

**12.** The Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 is amended—

(a) in section 1, by the insertion of the following definition:

“ ‘the chairperson of the Garda Síochána Ombudsman Commission’ means the member of the Garda Síochána Ombudsman Commission who is appointed or acting as its chairperson under section 65 of the Garda Síochána Act 2005;”.

(b) in section 4(a)—

(i) in subparagraph (i)(I), by the insertion of “or the Garda Síochána Ombudsman Commission” after “by the Garda Síochána”,

(ii) in subparagraph (ii), by the substitution of the following clause for clause (I):

“(I) in the case of a serious offence that is apprehended but has not been committed, investigations are being carried out—

(A) for the purpose of preventing the commission of the offence, by the Garda Síochána or another public authority charged with the prevention of offences of the kind in question, or

(B) for the purpose of enabling the offence to be detected, if it is committed, by the Garda Síochána or the Garda Síochána Ombudsman Commission or another public authority charged with the investigation of offences of the kind in question,”.

(c) in section 6(1)(a), by the substitution of the following subparagraph for subparagraph (i):

“(i) in case the authorisation is for the purpose of criminal investigation, either by—

(I) the Commissioner, or

(II) the chairperson of the Garda Síochána Ombudsman Commission, and”.

(d) in section 7, by the insertion of “, the chairperson of the Garda Síochána Ombudsman Commission” after “the Commissioner”, and

- (e) in section 10(2)(d)(i), by the insertion of “or any person engaged by the Garda Síochána Ombudsman Commission under section 74 of the Garda Síochána Act 2005 who is designated by it under section 73 of that Act to perform functions under any provisions of Part 4 of that Act” after “the Garda Síochána”.

### **Amendment of Criminal Justice (Surveillance) Act 2009**

#### **13. The Criminal Justice (Surveillance) Act 2009 is amended—**

(a) in section 1—

- (i) in the definition of “relevant Minister”, by the substitution of the following paragraph for paragraph (a):

“(a) the Minister—

- (i) in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Garda Síochána, and

- (ii) in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Ombudsman Commission;”,

- (ii) in the definition of “superior officer”, by the insertion of the following paragraph after paragraph (a):

“(aa) in the case of the Ombudsman Commission, a member of the Ombudsman Commission other than its chairperson;”,

- (iii) by the insertion of the following definitions:

“ ‘chairperson’, in relation to the Ombudsman Commission, means the member of the Ombudsman Commission who is appointed or acting as its chairperson under section 65 of the Garda Síochána Act 2005;

‘designated officer of the Ombudsman Commission’ means—

- (a) an officer of the Ombudsman Commission, or

- (b) a person engaged by the Ombudsman Commission under section 74 of the Garda Síochána Act 2005,

who is designated by the Ombudsman Commission under section 73 of that Act for the purpose of performing functions under any provisions of Part 4 of that Act;

‘member of the Ombudsman Commission’ means a member of the Ombudsman Commission appointed under section 65 of the Garda Síochána Act 2005;

‘Ombudsman Commission’ means the Garda Síochána Ombudsman Commission;”,

- (b) in section 2—

- (i) in subsection (1), by the insertion of “designated officers of the Ombudsman Commission,” after “members of the Garda Síochána,” and
  - (ii) in subsection (4)(b), by the insertion of “or designated officers of the Ombudsman Commission” after “members of the Garda Síochána”,
- (c) in section 3, by the insertion of “a designated officer of the Ombudsman Commission,” after “A member of the Garda Síochána,”,
- (d) in section 4—
- (i) in subsection (1), by the insertion of the following subsection after subsection (1):  
“(1A) A superior officer of the Ombudsman Commission may apply to a judge for an authorisation where he or she has reasonable grounds for believing that as part of an investigation being conducted by the Ombudsman Commission concerning an arrestable offence, the surveillance being sought to be authorised is necessary for the purposes of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purposes of proceedings in relation to the offence.”,
- and
- (ii) in subsection (5), by the substitution of “subsection (1), (1A), (2), (3) or (4)” for “subsection (1), (2), (3) or (4)”,
- (e) in section 5—
- (i) in subsection (2)(a), by the substitution of “the requirements specified in subsection (1), (1A), (2) or (3), as the case may be, of section 4” for “the requirements specified in subsection (1), (2) or (3), as the case may be, of section 4”, and
  - (ii) in subsection (7), by the insertion of “any designated officer of the Ombudsman Commission,” after “any member of the Garda Síochána,”,
- (f) in section 7—
- (i) in subsection (1), by the insertion of “a designated officer of the Ombudsman Commission,” after “A member of the Garda Síochána,”,
  - (ii) in subsection (2), by the substitution of “the requirements of subsection (1), (1A), (2) or (3), as the case may be, of section 4” for “the requirements of subsection (1), (2) or (3), as the case may be, of section 4”,
  - (iii) in subsection (7)(c), by the insertion of “designated officer of the Ombudsman Commission,” after “the member of the Garda Síochána,”, and
  - (iv) in subsection (12), by the insertion of the following paragraph after paragraph (a):

- “(aa) in the case of a designated officer of the Ombudsman Commission, the chairperson of the Ombudsman Commission,”,
- (g) in section 8—
- (i) in subsection (1), by the insertion of “a designated officer of the Ombudsman Commission,” after “a member of the Garda Síochána,”,
  - (ii) in subsection (2)(a), by the substitution of “the requirements of subsection (1), (1A), (2) or (3), as the case may be, of section 4” for “the requirements of subsection (1), (2) or (3), as the case may be, of section 4”,
  - (iii) in subsection (7)(c), by the insertion of “designated officer of the Ombudsman Commission,” after “the member of the Garda Síochána,” and
  - (iv) in subsection (10), by the insertion of the following paragraph after paragraph (a):
    - “(aa) in the case of a designated officer of the Ombudsman Commission, the chairperson of the Ombudsman Commission,”,
- (h) in section 11—
- (i) in subsection (2), by the insertion of “a person who” before “receives a report under section 7(12) or 8(10)”,
  - (ii) in subsection (5)(c)—
    - (I) in subparagraph (i), by the substitution of “the Ombudsman Commission” for “the Garda Síochána Ombudsman Commission”, and
    - (II) by the insertion of the following subparagraph after subparagraph (i):
      - “(ia) the Minister, in the case of a contravention by the Ombudsman Commission,”,
- and
- (iii) in subsection (10), by the insertion of “the Ombudsman Commission,” after “a place under the control of”,
- (i) in section 12(5), by the insertion of “the Ombudsman Commission,” after “a place under the control of”,
- (j) in section 13(4)—
- (i) in paragraph (d)(i) of the definition of “authorised person”, by the insertion of “the chairperson of the Ombudsman Commission,” after “the Commissioner of the Garda Síochána,”, and
  - (ii) in the definition of “relevant person”—
    - (I) in paragraph (a), by the insertion of “a designated officer of the Ombudsman Commission,” after “a member of the Garda Síochána,”,
    - (II) by the insertion of the following paragraph after paragraph (b):

“(ba) an officer of the Ombudsman Commission other than a designated officer of the Ombudsman Commission,”

and

(III) in paragraph (e), by the insertion of “the Ombudsman Commission,” after “the Garda Síochána,”

(k) in section 14—

(i) in subsection (4)(a), by the insertion of “designated officer of the Ombudsman Commission,” after “any member of the Garda Síochána,” and

(ii) in subsection (5), by the insertion of “a designated officer of the Ombudsman Commission,” after “a member of the Garda Síochána,”

and

(l) in section 15(2)(c), by the insertion of “the Ombudsman Commission,” after “the operations of the Garda Síochána.”

#### **Short title, collective citations and commencement**

- 14.** (1) This Act may be cited as the Garda Síochána (Amendment) Act 2015.
- (2) The Garda Síochána Acts 2005 to 2007 and this Act (other than *sections 12 and 13*) may be cited together as the Garda Síochána Acts 2005 to 2015.
- (3) The Criminal Justice (Surveillance) Act 2009 and *section 13* may be cited together as the Criminal Justice (Surveillance) Acts 2009 and 2015.
- (4) This Act shall come into operation on such day or days as the Minister for Justice and Equality may by order 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.