



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

**Policing Authority Submission to the Joint Oireachtas
Committee on Justice**

Policing, Security and Community Safety Bill

6 August 2021

Policing Authority submission to the Joint Oireachtas Committee on Justice on the Policing, Security and Community Safety Bill

Introduction

1. The Authority welcomes the opportunity to make this submission to the Joint Oireachtas Committee on Justice, on the General Scheme of the Policing, Security and Community Safety Bill (the Bill). The Authority has made submissions throughout the development of changes anticipated by this Bill, from its genesis in the deliberations and recommendations of the Commission on the Future of Policing in Ireland to the various iterations of the scheme of the bill developed by the Department of Justice.
2. On 7 October 2020, the Authority provided a submission on the draft General Scheme of the Policing and Community Safety Bill for Parts 1 to 4 (Part 6 which specified the future role of GSOC was addressed by a separate, later submission). This included a high level paper which addressed some key themes and concerns of the Authority at that time, namely:
 - Concern about the oversight architecture, with the proposed role of the new garda board;
 - The removal of functions from the Authority in relation to the Policing Priorities, Policing Plan and Garda Strategy Statement;
 - The removal of Authority involvement in appointments;
 - Multiple accountabilities for the Garda Commissioner; and,
 - Whether the intent of the Commission of the Future of Policing in Ireland with regard to Community Safety was being realised through the general scheme.

A detailed annex accompanied this submission, providing observations on each head where applicable. Copies of these submission have been submitted for the Committee Members' reference. The Authority met with representatives of the Department of Justice on 29 October to discuss the observations and again on 5 November to specifically discuss the approach to Community Safety. A new draft of the general scheme was published on 27 April 2021 and it would appear that many of the Authority observations have been adopted and found expression in the published scheme on which we are not providing comment. In its assessment of the various iterations of this Bill, a guiding principle for the Authority is that nothing should be done to weaken or dilute the depth and strength of the oversight of policing introduced in the 2015 Amendment Act. Its democratic and public value have steadily becoming clearer and there is no evidence of any benefit that would flow from any diminution.

3. The enactment of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act in 2015 was a sharp and necessary break with a troubled policing past. It represented a major development in the governance and oversight of the Garda Síochána. It was a clear statement of government intent to create a greater structural distance between the Department of Justice and the Garda Síochána than had previously existed. The then Minister for Justice said in the Dáil that there was a commitment *'to a root and branch reform of the administration of justice in this country'* and the then Taoiseach described the decision to set up an independent policing authority as:

'a radical change from what has applied since the foundation of the state. It is a change we intend to follow through and it will be a litmus test in many ways for the independence and authority of the new body'.

The Heads of the Policing and Community Safety Bill represent a very significant shift in public policy from that which was only brought into being in 2015. By any measure, they represent, and

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perhaps more importantly, will be widely perceived as, a resiling from important elements of the external, independent, robust oversight introduced on 1 January 2016.

4. The impression, apparently held and conveyed by the Commission on the Future of Policing, that the existence and functioning of the Authority under the provisions of the 2015 Act served to limit the capacity of the Commissioner to direct and manage the Garda Síochána was unfounded and not supported by any clear evidence from the first two and a half years of the Authority's existence. Nor has any experience in the period since then offered any such evidence. Support for the Commissioner in the management of the organisation, such as was envisaged in the 2005 Act, continues to be a highly desirable objective. But the current Scheme goes well beyond that and there is a risk that the establishment of the Board as proposed could present a confused pattern of responsibility for the Commissioner, dilute the effectiveness and clarity of the oversight arrangements and, in some circumstances, lead to duplication of effort.
5. The Authority has expressed its clear views in respect of its appointments responsibilities under the current statute in its response to the Commission's report and in its comments on the initial draft Heads. These are very relevant to the consideration of the comments on the Heads under review. Two important issues merit restatement here. The first is that the oversight responsibilities and the other statutory functions of the Authority give it a particularly relevant perspective on the needs of the organisation and offer insights not otherwise available. The second is that contrary to the views apparently held by the Commission, the Commissioner would enjoy no greater level of involvement in the appointments process were it undertaken by PAS than is available under the Authority's arrangements. A critical separate factor is the value of the appointments being made by a body external to the Garda Síochána. None of the comments on Heads relating to appointments should be interpreted as a change of position on these issues.
6. These observations are not for making no change in the current statutory arrangements as the Authority has indicated consistently over the past three years. Some elements of the 2015 Amendment Act merit and require change. Equally, there are a number of proposals in the Scheme that are warmly to be welcomed - some because they make important advances in the original draft Heads and some because they are valuable in themselves and important initiatives which will serve the public interest. As the substance of this response will show, there is much to welcome in the proposed measure, including the integration of the Authority and the Inspectorate in one body, with more clearly defined inspection provisions and the development of an independent security structure. There is also a movement to some greater co-ordination in the area of community safety although with less ambition and transformative potential than might have been expected and with a possible risk of greater centralisation than the Commission on the Future of Policing in Ireland would have anticipated.
7. However, the Authority has a number of noteworthy concerns in relation to some of the proposed draft provisions, in the context of the adequacy of the oversight provisions, which in its view represent a step backwards in terms of accountability of the Garda Síochána. The reporting lines for the Commissioner are now confused and involve the Minister, the Board, the PCSA and the National Office in an uncoordinated, overlapping manner which in has the very real potential to reduce public accountability and internalises key issues which should be subject to public scrutiny. These changes have been proposed without any indication or evidence base alluding to what is wrong with the current system. These will be drawn out in the following head by head commentary.

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Observations on Individual Heads

Head	Authority comment
Part 1 – Preliminary and General matters	
Heads 1 to 2	No comments
Head 3 Security Services	There are no specific observations in relation to the head itself. However, there would be benefit in prescribing elsewhere in the bill, an agreement between the Garda Síochána and oversight bodies as to what constitutes security services and what is subject to oversight from the outset, in terms of operational functions of the Garda Síochána. Elements of policing services are carried out by the units responsible for security services. This has posed potential difficulties in retrieving information in a timely manner to inform oversight activities.
Heads 4 to 5	No comments
Part 2 – An Garda Síochána	
Chapter 1 General	
Heads 6 to 9	No comments
Chapter 2 Board of the An Garda Síochána	
Head 10 Establishment and membership of Board	While it may be the intent to appoint Board members through the Public Appointments Service, the current wording of the Bill under subhead (2) is for the appointment of Board members by the Minister without a public dimension and without opportunity for individuals to express interest. This may result in negative perceptions in relation to the independence of appointments. It is preferable that competition for these appointments is conducted by an independent body and this should be explicitly specified under this head.
Head 11 Role of Board	<ul style="list-style-type: none"> - The Authority is in favour of the concept of a Management Board with the appropriate expertise and experience to support the Commissioner in the management of the organisation, as envisaged in the 2005 Act. It is the Authority’s view that such a Board could be invaluable to a Commissioner for the implementation of an agenda for change within the organisation. It would provide welcome external advice and support for the key areas of finance, human resources and IT, recognising that the pattern of the development of the Garda Síochána heretofore has not focussed on the requirement to have significant levels of professional expertise in these areas within the organisation. - However, the role of the board in the current Scheme goes well beyond that. It appears to be based on the notion that the existence and

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	<p>functioning of the Authority under the provisions of the 2015 Act served to limit the capacity of the Commissioner to direct and manage the Garda Síochána. This assertion was unfounded and not supported by any clear evidence at the time of the Commission’s work or in subsequent years.</p> <ul style="list-style-type: none"> - Furthermore, there is a risk that the role of the Board as proposed could present a confused pattern of responsibility for the Commissioner, dilute the effectiveness and clarity of the oversight arrangements and, in some circumstances, lead to duplication of effort. In its current proposed form, it may distort the roles and relationships which are vital and exist in the current oversight architecture, established by the Act. This confusion may diminish <u>public</u> accountability by internalising issues which would be better dealt with through more transparent oversight mechanisms. It is the Authority’s view that the correct balance between internal and external oversight is not achieved by the proposed model. - If the policy position remains committed to the establishment of a Garda Board, then it is the Authority’s view that it should structure such an internal board so that its focus is exclusively on: <ul style="list-style-type: none"> • improving and supporting the quality of the strategic management of the organisation (i.e. the expected functions associated with a non-executive board) – • its proper care of the substantial funding entrusted to it; • the wellbeing and accountability of all who work in the Garda Síochána; • ensuring that its technological capacity meets the needs of contemporary and foreseeable demands on policing; • maintaining a constant focus on data quality in all its aspects; and • taking all necessary measures to ensure that its estate and its means of being present in the community meet the needs of its staff and of the people they serve. - The Bill in its current form grants the board a much more expansive set of functions and has the capacity to remove oversight of key organisational issues from external, public oversight. It has been posited that the proposed structure contained in the Bill is based on boards of other state bodies. However, these other bodies are considerably different from the Garda Síochána in terms of powers afforded to the organisations they supervise, the potential impact on individuals and the public as a whole and organisation track record. - The current Bill does not facilitate <u>public accountability</u> of the Board itself. While it is proposed that the Board is accountable to the Minister, it is the Authority’s view that this does not create the necessary structural distance between the Department of Justice and the Garda Síochána. Moreover, the absence of reporting obligations for the Board to the Authority means its work will not be subject to external oversight and this has a very significant

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	<p>potential to change the incentives that underpin the public accountability of the Garda Commissioner.</p> <ul style="list-style-type: none"> - In this head or elsewhere in the act obligations for the Board to report to the Authority should be included in order for the Authority to take an holistic approach to oversight of the Garda Síochána and have sight of those organisational issues which impact on policing performance.
Heads 12 to 18	No comments
Chapter 3 Garda Commissioner, Deputy Commissioner	
Head 19 Appointment of Garda Commissioner	<ul style="list-style-type: none"> - The Authority did not support the changes proposed by this head in previous drafts. The appointment of the Commissioner (or equivalent rank) by an empowered, independent policing oversight body is best practice. No evidence has been provided for the necessity to remove this function from the Authority. - In respect of this head and others concerning appointments and as per comments in the introduction to this submission, it is the Authority's view that the oversight responsibilities and the other statutory functions of the Authority give it a particularly relevant perspective on the needs of the organisation and offer insights not otherwise available. - Furthermore, contrary to the views apparently held by the Commission on the Future of Policing in Ireland, the Commissioner would enjoy no greater level of involvement in the appointments process were it undertaken by PAS than is available under the Authority's arrangements. A critical separate factor is the value of the appointments being made by a body external to the Garda Síochána. None of the comments on Heads relating to appointments should be interpreted as a change of position on these issues. - The Authority has noted the inclusion of the PCSA as a consultee in this latest draft under subhead (3) prior to undertaking a selection competition and prior to any extension beyond the initial five-year contract. However, subheads (3) and (4) represent a significant weakening of the input of the Authority in the shaping of the requirements of the position which stands at odds with the functions of the Authority as outlined at Head 104 and its roles in respect of the priorities and the service plan. At a minimum, the head should provide for the Authority to be represented on the selection board for the position of Commissioner. - Subheads (6) and (7) have the potential to introduce two separate periods of uncertainty within a Commissioner's term of office. In particular, the potential extension of 2 years to the Commissioner's term under subhead (7) may be insufficient for the Commissioner to exercise leadership and influence the direction of the organisation, and may reduce stability of the organisation. Consideration may be given to shortening the term under

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	subhead (6) and lengthening to the extension under subhead (7) to equate to an approximately similar maximum term.
Head 20 Appointment of Deputy Garda Commissioner	The Authority did not support the changes proposed by this head in previous drafts as, similar to the changes in appointing the Commissioner, no evidence has been provided for the necessity to remove this function from the Authority. The Authority has noted that its proposed replacement body, the PCSA, has been added as a consultee prior to undertaking a selection competition, in the latest draft. However, similar to observations on Head 19, this head represents a significant weakening of the input of the Authority in the shaping of the requirements of the position. At a minimum, the head should provide for the Authority to be represented on the selection board for the position of Deputy Commissioner.
Head 21 to 22	No comments
Head 23 Suspension and removal of Garda Commissioner and Deputy Garda Commissioner	The Authority did not support the changes proposed by this head in previous drafts. The inclusion of the PCSA under subheads (3) and (7) since the last draft is welcomed. However, there should be a role for the Authority in such suspensions or removals beyond the consultation provision. If in the course of the PCSA's oversight there is a serious issue of performance in respect of a Commissioner, the Authority should have a statutory formal recourse, beyond some informal expression of views to the Minister. .
Head 24 Inquiry into any matter giving rise to notification under head 23(7)	<ul style="list-style-type: none"> - In previous drafts the Authority were not included in this head. There was no rationale provided for why the proposed PCSA would not be notified as to the findings of inquiry in relation to the Commissioner or Deputies. Even if it is determined that the PCSA is not to be involved in the suspension or removal there is no logic to it not being informed at the same time as the Board of the findings. The changes to the current draft provide for the findings of such inquiries to be shared with the PCSA inasmuch as they relate to policing services. - The head still does not include any notification for the PCSA when such a review is initiated.
Chapter 4 Functions, duties of the Garda Commissioner	
Heads 25 and 26	No comments
Head 27	The Authority welcomes the inclusion of this provision.
Head 28	No comments

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Head	Authority comment
29 Duty of Garda Commissioner to provide information	The Authority expressed concern at the PCSAs exclusion from this head in previous drafts. The inclusion of sub-head (2) in this latest draft appears to address these concerns.
Head 30 Directives from Minister	The capacities provided to the Authority under Section 25 of the current act to recommend a Directive to the Minister or to receive information from the Minister were not retained for the PCSA in previous drafts. These appear to have been addressed in subheads (2) and (6) of the latest draft
Heads 31 to 32	No comments
Head 33 Arrangements for obtaining views of public	It would be very desirable to require consultation with the Authority in respect of the Public Attitudes Research, as is presently the case in the Act, or any other comparable research, such as a Culture Audit, since its outcomes represent important measures in determining performance in respect of the Priorities or Policing Plan or otherwise in evaluating effectiveness.
Head 34	No comments
Chapter 5 Garda Personnel	
Heads 35 to 37	No comments
Head 38 Appointment of persons to ranks of Assistant Garda Commissioner and Chief Superintendent	<ul style="list-style-type: none"> - As per comments in the introduction to this submission and under Head 19, it is the Authority's view that the oversight responsibilities and the other statutory functions of the Authority give it a particularly relevant perspective on the needs of the organisation and offer insights not otherwise available. - Furthermore, contrary to the views apparently held by the Commission on the Future of Policing in Ireland, the Commissioner would enjoy no greater level of involvement in the appointments process were it undertaken by PAS than is available under the Authority's arrangements. A critical separate factor is the value of the appointments being made by a body external to the Garda Síochána. None of the comments on Heads relating to appointments should be interpreted as a change of position on these issues. - In this and other heads, the Bill removes the Authority's role in relation to Garda appointments. Over the past five years, the Authority has successfully run independent competitions for the ranks of Superintendent and above and has approved appointments of senior garda staff. This has brought fairness, specialist knowledge, and independent oversight to the processes involved, as attested by Garda members. - Following receipt of previous iterations of the Bill, the Authority did not support the changes proposed by this head. The appointment of the senior garda members by an empowered, independent policing oversight body is

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	<p>best practice and is the norm in most developed countries. No evidence has been provided for the necessity to remove this function from the Authority.</p> <ul style="list-style-type: none"> - The latest iteration of the Bill does leverage some of the Authority's expertise and ensures, through the involvement of the Public Appointments Service external operation of competition for posts for Chief Superintendents and above. This appears to have resolved some of the Authority's concerns with regard to previous drafts of the Bill. - However, the PCSA should have a consultative role, at least, in determining the competences for these positions and should be represented on the selection boards.
<p>Head 39 Suspension, removal of persons appointed to rank of Assistant Garda Commissioner or Chief Superintendent</p>	<p>The Authority was concerned about the PCSAs exclusion from previous iterations of this Bill. The inclusion of subheads (6) and (7) in the current draft is an improvement. However, the PCSA should be also be consulted, not just informed, in respect of any suspensions or removals under this Head.</p>
<p>Head 40 Inquiry into any matter giving rise to notification under head 39(3)</p>	<p>Under previous drafts the PCSA would not be notified as to the findings of inquiry in relation to the Commissioner or Deputies. This would appear to be addressed by the inclusion of subhead (6)(c).</p>
<p>Head 41 Appointment of persons to ranks below rank of chief superintendent and dismissal of such members for reasons of public confidence</p>	<ul style="list-style-type: none"> - While it may be the intent that appointments under this head would be carried out through the Public Appointments Service, the current wording of the Bill specifies that the Garda Síochána would assume responsibility for appointments to these ranks. It is the Authority's view that explicit reference is made to the role of the Public Appointments Service in this head. - In its current form, this head removes responsibility for running competitions for the appointment of Superintendents from the Authority. Rather, for appointments to Superintendent and all other ranks below that of Chief Superintendent, fall to the Commissioner. It would appear from the draft provisions in the Bill that the Commissioner has an unfettered role, save what may be in future regulations. This is particularly concerning with regard to appointments of Superintendents. The role of the Superintendent is one which carries significant power and authority in statute. It is also the rank from which the future senior leadership of the organisation will be drawn including, possibly, future Commissioners. External involvement in the appointment of Superintendents is in the Authority's view critical to safeguarding the future of the organisation. - The Garda Síochána's capacity to fulfil these competitions is limited, not least of all by its culture of cronyism. As reflected in the most recent

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	<p>culture audit in 2018, there are perceptions among the garda workforce that internal promotions were not based on meritocracy and a perception existed that favouritism and nepotism were pervasive.</p> <ul style="list-style-type: none"> - For all ranks, the new Bill does not provide sufficient safeguards in terms of dismissals. Under the Garda Síochána Act 2005, as amended, Section 14(2)(d) only allows for dismissal of ranks below that of superintendent provided there is consent by the Authority. - The removal of external oversight of dismissals of all ranks under this head further reduces transparency and the assurances of fair process.
Heads 42 to 44	No comments
Head 45 Appointment of members of garda staff	<p>This head transfers all appointments of all grades of garda staff to within the Garda Síochána. This includes senior staff appointments which under the Garda Síochána Act 2005, as amended, were approved by the Authority. This approval is to be sought from the Board under the new Bill. There should be provision for, at a minimum, consultation with the Authority in respect of appointments at Principal Officer and higher levels.</p>
Heads 46 to 48	No comments
Chapter 6 Accountability and funding of An Garda Síochána	
Head 49 Setting of priorities by Authority for policing services	<p>The Authority welcomes the return of this important function to the remit of the PCSA following its removal in previous drafts. The absence of target setting, as provided for the Minister under Head 50, may reduce the impact of priority setting for the Garda Síochána.</p>
Head 50	No comments
Head 51 Strategic plan	<p>Based on previous drafts, the Authority did not support the diminution of the role of the independent oversight body in the approval of the Strategy Statement. The requirement for the Authority to approve the Strategy Statement allows for external, public and independent challenge that is informed, through oversight, of the performance challenges facing the organisation and the views of stakeholders and communities. The latest draft provides for greater consultation with the PCSA under subheads (4) and (5). However, the Authority believes that the views of the PCSA in Head 4 (a) should derive from the Authority's own statutory capacity rather than be at the request of the Commissioner. The Head should be amended accordingly. The Authority should be consulted with under Subheads (6) and (7) if any amendments to the Plan are contemplated by the Minister or the Board.</p>

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Head	Authority comment
Head 52 Publication and implementation of approved strategic plan	In order to adequately fulfil its oversight role, the PCSA should also be provided with progress reports on the implementation of the strategy.
Head 53 Annual Service Plan	<ul style="list-style-type: none"> - The diminution of the role of the Authority in the Annual Service Plan (known as the “Policing Plan” under the current Act) represents a further reduction in public accountability. The current Act allows for the Authority to approve the Plan, while leaving ownership of the Plan to the Garda Síochána. This in turn facilitates robust engagement and co-creation of the plan between the Authority and the Garda Síochána to ensure the Plan is ambitious, addresses concerns of public interest and allows for agility as the operating environment changes. - The capacity for the Commissioner to invite the Authority to provide views on the Annual Service Plan provides little assurance that these views will find expression in the final plan and distorts the oversight relationship between the Authority and the Commissioner. It does not allow for sufficient agency on the part of the Authority to be proactive in the provision of its views and guidance on the content and focus of the Plan. Specifically, the Authority believes that the provision of the PCSA’s views, as provided for in Subhead (6) should derive from its own statutory capacity and not at the request of the Commissioner.. - Furthermore, the Bill does not allow for ongoing engagement between the Commissioner and the Authority during the life of the Plan to address issues as they arise and does not facilitate an agile response by the organisation. - Approval of the Plan under the draft provisions in the Bill switches to the Board which internalises the process and reduces public accountability and external oversight. - Subheads 8 and 9 allow for a situation whereby, should the Board not approve a plan, the Minister may request the Commissioner to submit a Plan without Board approval. This creates the further potential to diminish all oversight of the process. - Subhead 5 introduces a significant degree of political involvement from the Minister on the formation of the plan. Subhead (5)(j) compels the Commissioner, in developing the plan, to be consistent with the policies of any Minister of the Government to the extent that those policies may affect or relate to the functions of An Garda Síochána. This represents a significant change from the comparable provision in the current statute and might represent, or be perceived to represent, a significant erosion of the operational independence of the Commissioner. - Under subhead (10)(b), the Minister should consult with the PCSA to allow the PCSA to convey a view that would be critical in informing the Minister’s opinion in respect of the provision at 11(c). That will, in its turn, require

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Head	Authority comment
	that a copy of the Plan be made available to the PCSA before its approval under subhead (10)(a).
Head 54 Amendment of approved annual service plan	This head needs to be amended to reflect observations provided above with regard to Head 53 to ensure any amendments to the Plan continue to ensure the delivery of policing services to meet the needs of communities.
Head 55 Implementation of approved annual service plan	The PCSA should be in receipt of the same information as the Board and the Minister in order to ensure effective oversight and transparency.
Heads 56 to 65	No comments
Chapter 7 Codes of ethics, standards of integrity, unauthorised disclosure of information	
Heads 66 to 68	No comments
Chapter 8 Special inquires relating to administration, practice or procedure	
Head 69	No comments
Chapter 9 Liability	
Heads 70 to 71	No comments
Chapter 10 International service and cooperation with police services, law enforcement agencies or other relevant person outside State	
Heads 72 to 74	No comments
Head 75 Secondment from Police Service of Northern Ireland to certain ranks in Garda Síochána	Similar to appointments, the PCSA should be directly involved in secondments into the Garda Síochána at the ranks of Chief Superintendent and above, specifically being consulted under subhead (1)(b).
Heads 76 to 80	No comments
Chapter 11 Offences of causing disaffection, impersonation	
Heads 81 to 83	No comments
Part 3 - Community Safety	
Head 84	No comments

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Head	Authority comment
Head 85	<ul style="list-style-type: none"> - The Authority welcomes the provision for contribution by the PCSA to the strategy under subhead (3)(a). - However, in addition, the PCSA should be included as a consultee under subhead (6) in the event that the Government wishes to amend the strategy.
Head 86 National Community Safety Steering Group	<ul style="list-style-type: none"> - Following a lack of specific reference to the PCSA in this section in previous drafts, a representative of the PCSA is now provided for on the steering group. This remains a relatively minor involvement for a body with Community Safety in its title.
Head 87 National Office for Community Safety	<ul style="list-style-type: none"> - While the responsibilities of the Director to report to the PCSA are noted in Part 4, the remit of the National Office and the PCSA create the capacity for diffused accountability and complication of the oversight structure in relation to the delivery of policing services. The heads in their current form do not facilitate effective coordination and may place unnecessary burden on the Garda Síochána in terms of its oversight obligations
Heads 88 to 93	No comments
Head 94 Staffing of Local Community Safety Partnerships	<ul style="list-style-type: none"> - A person assigned under subhead (1) should be someone at a minimum level of seniority, especially having regard to the responsibilities envisaged under subhead (1)(b). - The rationale for the provision under subhead (2) is unclear and it should be considered if it is necessary for inclusion.
Head 95	No comments
Part 4 Establishment and Functions of Policing and Community Safety Authority	
Heads 96 to 103	No comments
Head 104 Objective and functions of the Authority	<ul style="list-style-type: none"> - The Authority warmly welcomes that many of its existing functions have been retained in the proposed replacement body - Policing and Community Safety Authority (PCSA). - It is also welcome that the PCSA will combine the existing functions of the Authority and have the inspection functions currently in the remit of the Garda Inspectorate. This will undoubtedly allow for a more holistic approach to oversight of policing performance and organisation reform of the Garda Síochána. - The Authority however has concerns that the removal of its existing functions in relation to the Garda Board, Appointments of Superintendents, and the Annual Policing Plan (renamed the Service Plan) pose more risks than enhancements to the oversight of the Garda Síochána.

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Head 105	No comments
Head 106	A provision should be considered for inclusion under this head, similar to that under head 93, subhead (3) as follows; “A statement that, in the course of a discussion at a meeting of the Authority or of any of its committees, is made in any form and without malice by a member of the Authority or by a person attending the meeting at the request of the Authority or committee is privileged for purposes of the law of defamation and so is any subsequent publication of the statement made without malice.”
Heads 105 to 109	No comments
Head 110 Annual Business Plan	It is noted that the measures set out here for scrutiny of the Authority’s Business Plan and changes to the same do not exist for other regulatory bodies such as the Legal Services Regulatory Authority, the Property Services Regulatory Authority or the Office of the Director of Corporate Enforcement/proposed Corporate Enforcement Authority. Such provision risks being overly intrusive and could be interpreted as fettering the independence and agility of the PCSA.
Heads 111 to 113	No comments
Head 114 Powers of Inspector of Policing Services	Consideration should be given as to whether the requirement for a memorandum of understanding under subheads (2) and (3) risks fettering the independence and agility of the PCSA’s inspection processes.
Head 115	No comments
Head 116	Consideration should be given to including a specific time limit for the laying of reports before the Houses of the Oireachtas.
Heads 117 to 119	No comments
Head 120	The wording of subhead (2)(c) should be amended for the Director to attend “at least 1 meeting” rather than only attend one meeting.
Heads 121 to 138	No comments
Part 5 – Office of the Garda Síochána Ombudsman &	
Part 6 – Complaints, Incidents of concern, investigations and other matters	
Heads 139 to 190	- In its submission to the Department (attached for the Committee’s reference) the Authority welcomed many aspects of the General Scheme as it related to OGO and the complaints process but highlighted a number of general and specific items of concern.

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Head	Authority comment
	<ul style="list-style-type: none"> - An overriding concern is that the volume of work which will be created for the OGO by the provisions in the general scheme is a cause for concern given GSOC's current resource capacity. If the policy direction is to be maintained, it would seem that it would need to be accompanied by significant increased investment in staffing and specifically a considerable expansion in the number of staff with investigative expertise. - At a high level, the issues previously raised by the Authority, and any additions to the revised draft of the general scheme that address these issues, can be summarised as follows: - The Authority highlighted that the scheme should not undermine the Commissioner's responsibility to manage poor performance and behaviour in his role as Chief Executive. The revised Part 6 reviewed by the Authority in 2020 had already removed references to OGO receiving complaints about performance. Additional changes have been made in the latest draft including, for example to Head 143 and Head 157 which may further strengthen the role of the Commissioner in this regard. - The Authority stressed the requirement for OGO to keep the PCSA informed. The addition of Head 174 in the latest draft requires the Garda Ombudsman to provide copies of reports of formal investigations under Head 168 to the Garda Commissioner, to the Minister or the PCSA, as appropriate with such recommendations "as he or she sees fit". Head 229 also provides for the creation of regulations with respect to sharing of information between the Commissioner, OGO and the Authority. This may address some of these concerns but given the PCSA role in relation to contributing to the reduction of complaints (as per Head 104), a question remains as to whether this addition is sufficient. - The Authority is very firmly of the view that there should be a similar standard of accountability for the entire garda workforce. There have been limited changes in this regard in the latest draft. - The Authority called for an active duty to be placed on all members of the Garda workforce to (a) report wrongdoing, and (b) provide information to investigations (whether undertaken by the Garda Síochána or OGO) including a provision that to not do so constitutes an offence. The introduction of Head 171 in the latest draft places obligations on persons to provide relevant information which they hold and introduces an offence for non-compliance. However, this is more reflective of compliance with instruction rather than encouragement of submitting information by the person holding such information of their own volition. Various other heads which were present in previous drafts, and referred to interference with an investigation, are still present. - The Authority highlighted a risk that the requirement for referrals from the Commissioner to OGO could pose a significant challenge to the Commissioner in implementing a performance management culture within

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Head	Authority comment
	<p>the Garda Síochána. It further highlighted that the requirement for referrals from the Commissioner to OGO could pose a significant challenge to the Commissioner in implementing a performance management culture within the Garda Síochána and proposed that some sort of triaging system could be used. It also called for a risk based approach with a review period prescribed in the legislation to allow for an examination of the effectiveness of this approach. A review has been included in Head 159 which will be conducted by the Minister and the PCSA are one of the stakeholders specified to be consulted in this process. Head 161 has also been changed in terms of the agreement of which complaints may be addressed by the Garda Síochána. In this head, and throughout, the term “performance management” has been removed and it would appear that the definitions used allow for greater leeway in this decision.</p> <ul style="list-style-type: none"> - The Authority cited numerous examples in the previous draft of heads which used terms such as “without delay” and “as soon as practicable” stating that more precision and specified time limits should be included. There have been no changes with regard to these observations. - In the previous draft, respondents were asked to consider whether “any related matter” could also be investigated as part of an investigation instigated on foot of a protected disclosure (Head 167 in the latest draft). This was removed from the earlier draft due to concerns regarding its vagueness. The Authority suggested some qualified term, such as “any matter necessarily arising from the disclosure” could be used, however this aspect has been excluded.
Part 7 - Independent Examiner of Security Legislation	
Heads 191 to 217	No comments
Part 8 Regulations and Miscellaneous Provisions	
Heads 220 to 228	These heads provide for the making and review of Regulations and contain a number of provisions for consultation with the various stakeholder bodies. The proposed PCSA is not among these. Given the statutory remit of the proposed PCSA the Authority is of the view that explicit reference to the PCSA should be made in the legislation under these heads.
Part 9 – Consequential Amendments	
Heads 230 to 252	No comments